

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-1077

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**United States Court of Appeals**

FOR THE SECOND CIRCUIT

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NO. 74-1077

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CAPITAL TEMPORARIES, INC. OF HARTFORD,  
CAPITAL TEMPORARIES, INC. OF NEW HAVEN,  
and  
CONSTANTINE T. ZESSOS,

*Plaintiffs and Appellants*

*vs.*

THE OLSTEN CORPORATION,

*Defendant and Appellee*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

---

**JOINT APPENDIX OF CAPITAL TEMPORARIES, INC.  
OF HARTFORD, CAPITAL TEMPORARIES, INC.  
OF NEW HAVEN AND CONSTANTINE T. ZESSOS  
AND THE OLSTEN CORPORATION**

---

RALPH C. DIXON, Esq.,  
PHILIP S. WALKER, Esq.,  
DAY, BERRY & HOWARD  
*Counsel for Appellants*

IRVING S. RIBICOFF, Esq.,  
RIBICOFF & KOTKIN  
MATTHEW J. FORSTADT, Esq.,  
FAIN & KONOVER  
*Counsel for Appellee*



**PAGINATION AS IN ORIGINAL COPY**

## LIST OF CONTENTS

	<i>Page</i>
List of Relevant Docket Entries .....	2
Copy of Docket .....	4
Amended Complaint .....	8
Answer .....	45
Counterclaim .....	55
Answer to Counterclaim .....	69
Defendant's Motion for Partial Summary Judgment .....	71
Affidavits of William Olsten, Robert Helweil and Matthew J. Forstadt in support of Motion for Summary Judgment .....	72
Motion for Partial Summary Judgment filed by plaintiffs .....	305
Affidavit in support of plaintiffs' Motion for Summary Judgment and in opposition to defendant's Motion for Summary Judgment .....	307
Affidavit in opposition to plaintiffs' Motion for Summary Judg- ment (Olsten) .....	355
Affidavit in opposition to plaintiffs' Motion for Summary Judg- ment (Helweil) .....	357
Ruling on Cross-Motions for Summary Judgment on Count Five of plaintiffs' Complaint .....	358
Copy of Partial Summary Judgment .....	374
Motion to Alter or Amend Judgment .....	375
Supplemental Memorandum .....	376
Copy of Amended Partial Summary Judgment .....	378

RELEVANT DOCKET ENTRIES

January 27, 1972	Amended Complaint, filed.
April 24, 1972	Answer, filed.
October 11, 1972	Counterclaim, filed by defendant.
December 6, 1972	Answer of the plaintiff Capital Temporaries, Inc. of New Haven
May 1, 1973	Motion for Summary Judgment, Notice of Motion, filed by defendant.
May 1, 1973	Affidavits of William Olsten, Robert Helweil and Matthew J. Forstadt in Support of Motion for Summary Judgment, filed.
May 23, 1973	Motion for Partial Summary Judgment, filed by plaintiffs at Hartford.
May 23, 1973	Affidavit in Support of plaintiffs' Motion for Summary Judgment and in Opposition to defendant's Motion for Summary Judgment, filed at Hartford.
June 20, 1973	Affidavit in Opposition to plaintiff's Motion for Summary Judgment, filed at Hartford. (William Olsten)
June 20, 1973	Affidavit in Opposition to plaintiffs' Motion for Summary Judgment, filed at Hartford. (Robert H. Helweil)
October 11, 1973	Ruling on Cross Motions for Summary Judgment on Count Five of plaintiffs' Complaint, entered. The plaintiff's motion for summary judgment is denied; defendant's motion for summary judgment on the fifth count is granted. Judgment will enter dismissing the fifth count of the complaint. SO ORDERED. Blumenfeld, J. M-10/15/73 Copies mailed.
October 15, 1973	Partial Summary Judgment entered dismissing Count Five of the Complaint. Markowski, C. M-10/16/73 Copies mailed.

October 25, 1973 Motion to Alter or Amend Judgment, filed by plaintiffs at Hartford.

December 4, 1973 Supplemental Memorandum, entered. The judgment is amended by adding the following: this is to certify that the judgment dismissing Count Five involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate determination of the litigation. SO ORDERED. Blumenfeld, J. M-12/5/73 Copies mailed.

December 13, 1973 Amended Partial Summary Judgment. Ordered that the partial summary judgment dismissing Count Five involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate determination of the litigation. Markowski, C. M-12/13/73 Copies mailed.

## CIVIL DOCKET

M. Joseph Blumenfeld

Jury demand date: 1/27/72 by Plaintiffs

J. C. Form. No. 156 Rev.

TITLE OF CASE		ATTORNEYS				
CAPITAL TEMPORARIES, INC. OF HARTFORD; (1) Philip S. Walker CAPITAL TEMPORARIES, INC. OF NEW HAVEN (2) Robert P. Knickerbocker and CONSTANTINE T. ZESSOS		For plaintiff: Day, Berry & Howard One Constitution Plaza Hartford, Connecticut Ralph C. Dixon				
v.  (3)						
THE OLSTEN CORPORATION COMMISSIONER OF THE SUPERIOR COURT, and JAMES O'NEILL, JUDGE, SUPERIOR COURT AND ISAC G. REMMONSON, DEPUTY-SHERIFF FOR HARTFORD COUNTY		For defendant: * (1) Irving S. Ribicoff (For: Olsten Co) Ribicoff & Kotkin 799 Main Street Hartford, Conn. 06103 (2) Louise H. Hunt * (3) Matthew J. Forstadt  * Attorneys for defendant Louise H. Hunt, Commissioner of the Superior Court.				
STATISTICAL RECORD		COSTS	DATE 1971	NAME OR RECEIPT NO.	REC.	DIB.
S. 5 mailed	Clerk		11/26	Philip S. Walker	15 00	
S. 6 mailed	Marshal		11/30	Deposit: " CF 100-59		15 00
Basis of Action: Action arising under 28 USC §§ 2281 seeking to enjoin and restrain the enforcement and execution of §§ 52-279 Depositions and 52-280, Chap 904 of the Conn. Gen. Statutes (re attachment and seizure of business records by defendants). Also						
				EXHIBIT A		

DATE	PROCEEDINGS	Case Judge
1971		
11/24	Complaint, Motion for a Three-Judge Court pursuant to 28 USC [2281], Certificate of Counsel, and Affidavit of Constantine T. Zessas, filed at Hartford.	
"	Motion for Temporary Restraining Order and Preliminary Injunction, filed at Hartford	
"	Appearance of Philip S. Walker and Robert P. Knickerbocker entered for Plaintiffs.	
"	Motion under Rule 4(c) of the Federal Rules of Civil Procedure, for appointment of Joseph P. Ploszaj to serve process, filed at Hartford. Order Appointing Person to Serve Process, entered, Earl, C. M-11/29/71	
"	Order to Show Cause for appearance at Hartford on November 30, 1971, at 2:00 P.M., entered. Blumenfeld, J. Copy mailed to Attorney Walker. M-11/29/71	
"	Summons issued at Hartford and together with copies of same and of complaint and Attested copies of Order to Show Cause and copies of all other papers filed, handed to the Marshal and to Mr. Ploszaj for service. (Marshal to serve Louise H. Hunt and Olsten Corporation; Mr. Ploszaj to serve Hogan and Homelson)	
11/29	Marshal's Returns Showing Service, filed.-Summons, Complaint, Order to Show Cause, Certificate, Motion & Affidavit. (Louise Hunt & Olsten Corporation)	
11/30	Return of Service of Joseph P. Ploszaj, filed.-Order to Show Cause, Summons, Complaint, Motion for Preliminary Injunction and Affidavit of Constantine T. Zessas (Patrick Hogan and Isaac Homelson)	
11/30	Hearing on Order to Show Cause. "Denied". Blumenfeld, J. M-12/1/71 (Re: Temporary Restraining Order and Preliminary Injunction)	
11/30	Memorandum Re Jurisdiction, filed by Plaintiffs at Hartford.	
12/2	Order endorsed on Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction, as follows: "Under the circumstances presented at the hearing corroborating those fully set forth in the certificate of counsel filed contemporaneously with this motion, the motion is denied. This court has no jurisdiction to enjoin pending proceedings in the state courts. 28 U.S.C. § 2283. 11/30/71". Blumenfeld, J. M-12/2/71 Copies mailed to all counsel.	
12/3	Appearance of Irving S. Ribicoff, Louise H. Hunt and Matthew J. Forstadt, entered for defendant The Olsten Corporation.	
"	Appearance of Irving S. Ribicoff and Matthew J. Forstadt, entered for defendant Louise H. Hunt, Commissioner of the Superior Court.	
1972		
1/19	Motion to Drop Party Defendants (Louise H. Hunt, Patrick J. Hogan, and Isaac Homelson) and File Amended Complaint, and Notice of Motion, filed by Plaintiffs.	
1/21	Appearance of Atty. Ralph C. Dixon of Day, Berry & Howard entered for the plaintiffs.	
1/24	Hearing on Plaintiffs' Motion to Drop Party Defendants, Louise H. Hunt, Patrick J. Hogan and Isaac Homelson, and File Amended Complaint. Granted, no objection. Blumenfeld, J. M-1/25/72	
1/27	Amended Complaint, filed.	
"	Demand for Jury Trial, filed by Plaintiffs.	
2/2	Order endorsed on Plaintiffs' Motion to Drop Party Defendants Louise H. Hunt, Patrick J. Hogan and Isaac Homelson) and File Amended Complaint, granting same. Blumenfeld, J. M-2/2/72 Copies mailed to all counsel, to defendants.	

(Cont'd.)



116 Rev. Civil Docket Continuation

## CAPITAL TEMPORARIES, INC. OF HARTFORD, et al v.

DATE	PROCEEDINGS	Date of Judgment
7/2		
7/25	ANSWER, FILED.	
7/5	Notice to take Deposition of Richard A. Werner on May 20, 1972, filed by plaintiffs.	
7/22	Placed on Trial List.	
7/31	Deposition of Richard A. Werner, filed.	
7/12	Motion to Amend Answer by Adding Counterclaim and Notice of Motion, filed by defendant.	
7/25	Hearing re Defendant's Motion to Amend Answer by Adding Counterclaim "over to Oct. 10th by agreement". Blumenfeld, J. M-9/27/72	
10/10	Hearing on Defendant's Motion to Amend Answer by Adding Counterclaim. "Permission to file proposed answer and counterclaim granted." Blumenfeld, J. M-10/11/72. Copies mailed to all counsel.	
10/11	Counterclaim, filed by defendant.	
10/12	Notice to take Deposition of Alex R. Faberman on November 6, 1972, filed by plaintiffs.	
11/13	Notice to take Deposition of Alex R. Faberman on November 20, 1972, filed by plaintiff.	
11/30	Request for production of documents, filed by defendant.	
"	Notice to take Depositions (3) of the following: Jerry Pangakis, Constantine T. Zessos and Sue Codraro on December 26, 1972, filed by defendant.	
12/76	Answer of the Plaintiff Capital Temporaries, Inc. of New Haven to Defendant's Counterclaim, filed.	
9/73		
1/2	Response to Defendant's Request for Production Included in the Notices of Deposition of Constantine T. Zessos and Jerry Pangakis, filed by Plaintiffs.	
2/14	Deposition of Alec R. Faberman, filed.	
5/1	Motion for Summary Judgment, Notice of Motion, filed by Defendant.	
"	Affidavits of William Olsten, Robert Belweil and Matthew J. Forstadt in Support of Motion for Summary Judgment, filed.	
"	Memorandum in Support of Defendant's Motion for Summary Judgment, filed.	
5/23	Motion for Partial Summary Judgment, filed by plaintiffs at Hartford.	
"	Memorandum of Law in Support of Plaintiffs' Motion for Partial Summary Judgment and in Opposition to the Defendant's Motion for Summary Judgment, filed at Hartford.	
"	Affidavit in Support of Plaintiffs' Motion for Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment, filed at Hartford.	
7/29	Defendant's Motion for Summary Judgment as to Fifth Count of Plaintiff's Amended Complaint. "Over to MD's next Civil Motion after 8/11/73." Blumenfeld, J. M-5/30/73.	
6/20	Defendant's Supplemental Memorandum in Support of Defendant's Motion for Summary Judgment as to Plaintiffs' Fifth Count and in Opposition to Plaintiffs' Motion for Summary Judgment as to the Fifth Count, filed at Hartford.	
"	Defendant's Response to Plaintiffs' Motion for Summary Judgment, filed at Hartford.	
"	Affidavit in Opposition to Plaintiff's Motion for Summary Judgment, filed at Hartford. (William Olsten)	
"	Affidavit in Opposition to Plaintiffs' Motion for Summary	



DATE  
1973

PROCEEDINGS

Dist  
Judge

6/25

Judgment, filed at Hartford. (Robert H. Helweil)  
Hearing on (1) Defendant's Motion for Summary Judgment as to  
Fifth Count of Plaintiff's Amended Complaint; (2) Defendant's Motion  
for Summary Judgment; and (3) Plaintiff's Motion for Partial Summary  
Judgment. Decision Reserved on all (3) Motions. Plaintiff filed  
list of Citations referred to in oral argument. Blumenfeld, J.  
M-6/27/73.

10/11

Ruling on Cross Motions for Summary Judgment on Count Five  
of Plaintiffs' Complaint, entered. The plaintiff's motion for  
summary judgment is denied; defendant's motion for summary judgment  
on the fifth count is granted. Judgment will enter dismissing the  
fifth count of the complaint. SO ORDERED. Blumenfeld, J. M-10/15/73  
Copies mailed.

10/15

Partial Summary Judgment entered dismissing Count Five of  
the complaint. Markowski, C. M-10/16/73 Copies mailed.

10/25

Motion to Alter or Amend Judgment, filed by plaintiffs at  
Hartford. (10/25/73)

11/12

Plaintiffs' Brief in Support of Motion to Alter or Amend  
Judgment, filed at Hartford.

11/26

Hearing on Plaintiff's Motion to Alter or Amend Judgment,  
Decision Reserved. Blumenfeld, J. M-11/28/73.

11/27

Defendant's Opposition to Plaintiff's Motion to Alter or  
Amend Judgment, filed at Hartford.

11/27

Plaintiff's Reply to Defendant's Opposition to Plaintiff's  
Motion to Alter or Amend Judgment, filed at Hartford.

12/4

Supplemental Memorandum, entered. The judgment is amended by  
adding the following: this is to certify that the judgment dismiss-  
ing Count Five involves a controlling question of law as to which  
there is a substantial ground for difference of opinion and that an  
immediate appeal from the order may materially advance the ultimate  
determination of the litigation. SO ORDERED. Blumenfeld, J.  
M-12/5/73 Copies mailed.

12/13

Amended Partial Summary Judgment, entered. Ordered that the  
partial summary judgment dismissing Count Five involves a controlling  
question of law as to which there is a substantial ground for  
difference of opinion and that an immediate appeal from the order  
may materially advance the ultimate determination of the litigation.  
Markowski, C. M-12/13/73 Copies mailed.

A True Copy

ATTEST:

SYLVANUS A. MARKOWSKI  
Clerk, U. S. District Court

By: *[Signature]*  
Deputy In Charge

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

CAPITAL TEMPORARIES, INC. OF HARTFORD, :  
CAPITAL TEMPORARIES, INC. OF NEW HAVEN, :  
and CONSTANTINE T. ZESSOS, :

Plaintiffs :

VS. :

THE OLSTEN CORPORATION, :

Defendant :

CIVIL ACTION

No. 14749

JANUARY 26, 1972

AMENDED COMPLAINT

JURISDICTION

1. The plaintiffs, Capital Temporaries, Inc. of Hartford and Capital Temporaries, Inc. of New Haven, are corporations incorporated under the laws of the State of Connecticut which have their respective principal places of business in the State of Connecticut. The plaintiff, Constantine T. Zessos (hereinafter "Zessos") is a citizen of the State of Connecticut. The defendant, The Olsten Corporation (hereinafter "Olsten") is a corporation incorporated under the laws of the State of Delaware, having its principal place of business in the State of New York, and is found and transacts business in Connecticut. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000. This action is also cognizable under, and jurisdiction is also founded upon, the antitrust laws of the United States, 15 United States Code §§1, 14, 15 and 22, and 28 United States Code §§2201 and 2202, as hereinafter more fully appears.

FIRST COUNT:

2. On or about September 17, 1965, the plaintiff Zessos and the defendant's predecessor, Olsten U.S.A. Inc., executed an agreement, a true copy of which is annexed hereto as Exhibit A.

3. Amendments to said agreement, true copies of which are annexed hereto as Exhibits B and C, were executed on or about

February 1, 1968, and August 23, 1969, respectively.

4. The term of this agreement was five years and six weeks.

5. Under said agreement and amendments thereto (hereinafter collectively referred to as the "agreement") and pursuant to the terms thereof, the plaintiff Zessos effected the incorporation of three Connecticut corporations, Olsten's of Hartford County, Inc., Olsten's of New Haven County, Inc., and Handy Andy Labor of New Haven, Inc. Of these corporations, the first and second named carried on the business of supplying temporary office personnel from locations at 99 Pratt Street, Hartford, and 900 Chapel Street, New Haven, respectively. Handy Andy of New Haven, Inc., during the period in which it was an active corporation, carried on the business of supplying "blue collar" workers in New Haven at 394 Crown Street.

6. (The capital investment for each of said corporations was made exclusively by the plaintiff Zessos) and neither the defendant Olsten nor its predecessor ever had or has had any equity position in any of them.

7. (The plaintiff, Capital Temporaries, Inc. of Hartford, is the same corporation as Olsten's of Hartford County, Inc., its name having been so changed pursuant to the laws of the State of Connecticut, effective November 1, 1971.

8. (The plaintiff, Capital Temporaries, Inc. of New Haven, is the same corporation as Olsten's of New Haven County, Inc., its name having been so changed pursuant to the laws of the State of Connecticut, effective November 1, 1971.

9. The plaintiffs have performed their obligations under the agreement with the defendant Olsten and have discharged their duties with respect to the same.

10. The defendant, Olsten, however, has failed to live up to its obligations under said agreement and amendments thereto in the following respects:

- (a) It has failed to assist the plaintiffs with research and surveys;
- (b) It has failed to make two field trips to each of the plaintiffs' places of business each year, as required by the agreement;
- (c) It has failed to engage in national institutional advertising in support of the plaintiffs' marketing efforts in Connecticut;
- (d) It has not made good faith efforts to engage in national institutional advertising to the extent necessary and advisable for the assistance of the plaintiffs.

11. The plaintiffs have paid to the defendant Olsten large sums of money in license fees and franchise fees for which there has been virtually a total failure of consideration on the part of the defendant.

12. Because of defendant's breaches of said agreement and because of the illusory nature of the alleged consideration by the defendant, the plaintiffs have lost large sums of money in such franchise fees.

SECOND COUNT:

13. Paragraphs 1 through 12 inclusive are hereby incorporated by reference in the Second Count.

14. The defendant, as franchisor, owed to the plaintiffs, as franchisees, a fiduciary duty.

15. In order to induce the plaintiff Zessos to enter into said agreement, the defendant Olsten represented:

- (a) That it would provide continuous guidance in advertising and public relations matters;
- (b) That it would provide national advertising at its expense for the purpose of bringing business to the plaintiffs along with other franchisees at their locations in Connecticut;
- (c) that a "regular" newsletter would be prepared and mailed to the plaintiffs' clients and employees by the defendant;
- (d) That printed materials would be supplied by the defendant at its cost to the plaintiffs;

(e) That it would endeavor to refer its "national accounts" to the plaintiffs for local service and that among the "thousands" of firms on its customer list were nine of the ten largest firms in the country;

(f) That it had a national image that was known and accepted by the business community, press, and public throughout the country, including Hartford and New Haven Counties in the State of Connecticut.

16. Said material representations were either false at the time made or were recklessly made without regard for whether they were true or false.

17. Said representations were in fact relied on by the plaintiff Zessos, and if they had not been made, he would not have entered into said agreement with the defendants.

18. The defendant Olsten failed to disclose to the plaintiffs that:

(a) The Olsten name was virtually unknown to the Connecticut business community;

(b) That it would be entirely up to the plaintiffs to develop a business in Connecticut and that, in fact, the defendant would not be of any assistance in delivering "national account" business in Connecticut to the plaintiffs;

(c) The blue collar "Handy Andy" operation was undeveloped and that the defendant Olsten would be using the plaintiffs to develop a blue collar operation which would give some value to this trade name at minimal risk and expense to the defendant;

(d) That it would not provide effective national advertising, particularly in the "Handy Andy" operation as compared with its competitor;

(e) That while the risks of the entire enterprise would be upon the plaintiffs and the development of a successful business would virtually rest solely on the efforts of the plaintiffs, the defendant Olsten would reap large amounts of money as franchise fees completely disproportionate to its contribution.

19. If such facts had been fairly and candidly disclosed, the plaintiff Zessos would not have entered into said agreement with the defendant.



20. As a result of said material misrepresentations, breach of fiduciary obligations on the part of the defendant, and fraudulent concealment of facts, the plaintiffs have been greatly damaged.

THIRD COUNT:

21. Paragraphs 1 through 20 are herein incorporated by reference in the Third Count.

22. Following the expiration of the original agreement, on October 29, 1970, the plaintiffs continued to operate as franchisees of the defendant Olsten and continued to pay the defendant franchise fees. Upon the misrepresentation that all Olsten franchisees had the same agreement and the further misrepresentation that there would be greater support from the defendant to the local franchisees, the plaintiff Zessos signed a paper purporting to establish a new franchise fee rate. Said rate, which was an essential term of any agreement, was never put into effect, and the parties never did come to a meeting of the minds on renewal. The last proposal by the defendant in this matter was made by its president, Alec Faberman, in a letter to the plaintiff Zessos dated April 8, 1971, proposing that there be a 5 percent franchise fee for the rest of Zessos' natural life. Said proposal was unacceptable to the plaintiffs and was never agreed to by them.

23. Because of the many breaches and misrepresentations, concealment and other conduct by the defendant as set forth above and particularly the failure of the plaintiff to provide the promised support to local franchisees such as the plaintiffs and the discovery that other Olsten franchisees had different arrangements with the defendant, the plaintiff ceased operation as Olsten franchisees commencing November 1, 1971.

24. Subsequent to November 1, 1971, the defendant opened branch offices in Connecticut under the name "Olsten Temporary Services" which are in competition with the plaintiffs in the supplying of temporary office personnel.

25. In the course of so doing, the defendant has engaged in deceptive trade practices and unfair competition with respect to the plaintiffs in violation of Connecticut law by:

- (a) Causing the likelihood of confusion or misunderstanding by the public, including both those who are or may be available for employment as temporary office employees, and those who now have or in the future will have need of such service;
- (b) Attempting to palm off its new Connecticut branch offices as the same business with whom the plaintiffs' temporary employees and customers had been doing business over the years;
- (c) Disparaging the services of the plaintiffs by making false or misleading representations of fact;
- (d) Making untrue and misleading statements in its advertising and promotional literature;
- (e) Seizing and detaining the plaintiffs' business records as more fully set forth below;
- (f) Causing copies to be made of the plaintiffs' business records during the course of their detention without legal cause or justification;
- (g) Attempting to divert the plaintiffs' incoming mail to the defendant's branch offices;
- (h) Engaging in predatory price cutting and the offering of extra inducements to temporary personnel, not to make profits for itself, but in an attempt to drive the plaintiffs out of business.

26. As a result of said unfair methods of competition and unfair or deceptive acts or practices, the plaintiffs have been greatly damaged.

FOURTH COUNT:

27. On November 11, 1971, the defendant commenced an action against the plaintiffs in the Superior Court for Hartford County.

28. On said date, in connection with said action, the business records of the defendant Capital Temporaries, Inc. of Hartford, were taken by attachment without notice and without a hearing by a deputy sheriff acting under the instructions of the defendant or its attorney, and assisted by an employee of the defendant.

29. Despite due demand made upon it by the plaintiffs, the defendant refused to return said records to the plaintiff Capital Temporaries, Inc. of Hartford until January 14, 1972.

30. Said attachment of the business records of the plaintiff Capital Temporaries, Inc. of Hartford was not made for any proper purpose but rather for the following unlawful ulterior purposes:

- (a) To handicap the plaintiff, Capital Temporaries, Inc. of Hartford, in carrying on its business as a competitor of the defendant;
- (b) To obtain for itself a collateral advantage in negotiations with the plaintiff due to the stress placed upon the plaintiff by this deprivation of its records;
- (c) To make copies of said business records following their seizure and in the course of their detention without permission and without leave of court.

31. The defendant has thereby willfully abused the attachment process with reckless indifference to the interest of the plaintiff Capital Temporaries, Inc. of Hartford and to its great loss and damage.

FIFTH COUNT:

32. Paragraphs 1 through 8 of the First Count are hereby incorporated by reference in the Fifth Count.

33. Olsten, at all times relevant hereto, possessed the trade name and mark OLSTEN'S.

34. In order to obtain an exclusive license to use said trade name and mark, and to operate a "white collar" franchise thereunder (the tying product), the plaintiff Zessos was required



to establish and operate a separate operation to handle the supplying of "blue collar" personnel under the trade name and trade mark of "Handy Andy Labor." (The tied product)

35. Plaintiff was further required to pay franchise fees to defendant from billings of the blue collar operation.

36. The "Handy Andy Labor" or blue collar operation was separate and distinct from the Olsten or white collar operation, and separate books and records were maintained relative thereto. The agreement in this respect provided in paragraph 2 thereof that "separate bookkeeping shall be kept for the 'blue collar' division."

37. The operation of a Handy Andy Labor or blue collar operation by plaintiff was not essential to the white collar franchise under the Olsten trade name and trade mark: neither was it essential for the successful operation of the Olsten white collar franchise that there co-exist a Handy Andy franchise for blue collar workers.

38. The defendant generally and in its dealings with plaintiffs specifically was engaged in interstate commerce and the requirements by defendant referred to above, and the franchise fees which were paid thereunder to defendant by plaintiffs, were imposed, collected and paid in the course of said interstate commerce.

39. A not insubstantial amount of interstate commerce has been affected by such arrangement.

40. The defendant's unique registered trade name and trade mark OLSTEN'S, in combination with its demonstrated power to require the tie-in of a Handy Andy Labor operation in order to obtain a white collar Olsten franchise, is in fact and as a matter of law, sufficient economic power appreciably to restrain competition in the blue collar franchise market.

41. As a result of the illegal tie-in referred to above, plaintiffs were required to establish and maintain a blue collar Handy Andy Labor operation and to pay franchise fees to defendant thereunder; they were denied the benefits of full and free competition; and competitors of defendant were denied free access to the market for the sale and establishment of blue collar franchises, thereby substantially restraining and eliminating competition in the tied blue collar franchise product market in interstate commerce, all in violation of Section 1 of the Sherman Act, 15 United States Code §1, and of Section 3 of the Clayton Act, 15 United States Code §14.

42. As a further result of the illegal tie-in referred to above, plaintiffs have been damaged in their business and property.

SIXTH COUNT:

43. Paragraphs 1 through 8 of the First Count and paragraphs 33 through 42 of the Fifth Count are hereby incorporated by reference in the Sixth Count.

44. The establishment, collection, and payment of franchise fees, and the operations of the various franchises giving rise to such, including the establishment of rates for services of employees of the various franchises, constituted a continuous stream of commerce in interstate commerce.

45. Paragraph 5 of the agreement provided that:

"The LICENSEE agrees to cooperate and consult the LICENSOR relative to national accounts and to conform to any special arrangements or rate reductions initiated by the LICENSOR for the benefit of the LICENSEE."

46. Paragraph 14 of the agreement provided that:

"Rates for services provided by the LICENSEE shall be competitive in the area serviced by the LICENSEE and shall be established after consultation with the LICENSOR."

47. Said agreement, particularly in paragraphs 2, 5 and 14 thereof and the amendment of August 23, 1969, thereto, constituted

3

a contract, combination or conspiracy in violation of Section 1 of the Sherman Act, 15 United States Code §1, is and was in violation of Section 3 of the Clayton Act, 15 United States Code §14, and said agreement is and was by reasons of such provisions illegal, voidable, and unenforceable.

WHEREFORE, the plaintiffs pray:

1. Damages in the sum of \$300,000 in the causes of action alleged in the First, Second, Third and Fourth Counts.

2. Punitive and exemplary damages in the sum of \$100,000 for the cause of action alleged in the Fourth Count.

3. An accounting in the causes of action alleged in the First, Second, Third and Fifth Counts.

4. Damages in the sum of \$50,000 under the Fifth Count, said sum to be trebled to \$150,000 as provided by the antitrust laws of the United States, together with the costs of this suit, including a reasonable attorney's fee.

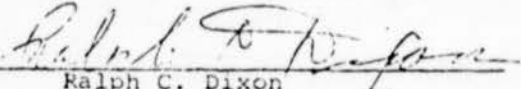
5. A declaratory judgment that the agreement is in violation of Section 1 of the Sherman Act, 15 United States Code §1, and Section 3 of the Clayton Act, 15 United States Code §14, and is illegal, voidable, and unenforceable.


6. Such other further and different relief as the nature of the case may require and as may seem just and proper to the court.

The plaintiffs demand trial by jury.

PLAINTIFFS

By

  
Ralph C. Dixon

  
Philip S. Walker, both of  
Day, Berry & Howard  
One Constitution Plaza  
Hartford, Connecticut

I, Ralph C. Dixon, hereby certify that a copy hereof has been mailed this date to Irving S. Ribicoff, Louise H. Hunt, and Matthew J. Forstadt, Ribicoff & Kotkin, 799 Main Street, Hartford, Connecticut; and to Patrick J. Hogan, 95 Washington Street, Hartford, Connecticut, pursuant to Rule 5 of the Rules of Procedure of this court.


  
Ralph C. Dixon

EXHIBIT A

AGREEMENT made in the City and State of New York, on the 17th day of September, 1955, by and between OLSTEN U.S.A., INC., a New York Corporation having its principal office at 152 West 42nd Street, City and State of New York (hereinafter referred to as LICENSOR) and CONSTANCE T. ZIMMER, residing at 255 Central Boulevard, City and State of New York (hereinafter referred to as LICENSEE).

WHEREAS, the LICENSOR is presently engaged in the business of providing temporary personnel and franchising others to engage in such business, and

WHEREAS, the LICENSEE possesses the trade name and trade mark OLSTEN and desires both to increase and expand the use of the same and to maintain the high standards identified with them, and

WHEREAS, the LICENSEE has developed various techniques and systems in connection with the aforesaid business, and

WHEREAS, the LICENSEE desires an exclusive license to use said trade name, trade mark, various techniques and systems and to engage in the business of providing temporary personnel in the area described as follows:

The Counties of Hartford and Middlesex,  
in the State of Connecticut

NOW, THEREFORE, be it agreed as follows:

GRANT OF  
LICENSE

HANDY ANDY

LICENSEE  
CHARGE

1. The LICENSOR hereby grants to the LICENSEE the exclusive and non-transferable license to use the trade name and trade mark OLSTENS, the various techniques and systems in the area above described so long as the LICENSEE observes and performs all of the terms, covenants and conditions of this agreement. The trade mark in as appears on the attached letterhead which is hereby made a part hereof and marked Exhibit A.

2. The grant of the license hereunder includes the right of the LICENSEE to use the trade mark and name HANDY ANDY LABOR. All "blue collar" personnel shall be supplied by a division of the LICENSEE designated as HANDY ANDY LABOR commencing six (6) months from the date hereof. For the purposes of standards and rate of franchise fee, the total of all billings from whatever source shall be included.

The division shall be known as HANDY ANDY LABOR, a division of OLSTENS OF GREATER HARTFORD, INC. At the option of the LICENSEE, such division may be operated as a separate corporate entity. In such event, it shall be designated as HANDY ANDY LABOR OF GREATER HARTFORD, INC. In either event, separate bookkeeping shall be kept for the "blue collar" division. In the event the LICENSEE incorporates, all of the provisions as set forth in paragraph 23 shall apply.

3. The LICENSEE, upon the signing of this agreement, agrees to pay the sum of \$6,000.00 as a charge for the franchise which licenses the use of the trade name, trade mark, various techniques and systems and is also in payment of the initial office fee, the contents of which are set forth in Exhibit B attached hereto and made a part hereof.



FRANCHISE  
FEE

4. In addition to, and apart from, the license charge, the LICENSEE agrees to pay franchise fees computed at five (5) per cent of gross billings. Such franchise fees shall be based upon each prior month's gross billing. However, the first such monthly franchise fee shall be due and payable immediately following gross billing of at least \$1,500.00 in any one week, but in any event no later than six (6) months from the date of the LICENSEE's first billing.

NATIONAL  
ACCOUNTS

5. The LICENSEE agrees to cooperate and consult the LICENSOR relative to national accounts and to conform to any special arrangements or rate reductions initiated by the LICENSOR for the benefit of the LICENSEE.

UNIFORMITY

6. Systems, stationery, advertising, personnel recruitment and account solicitation shall conform closely to patterns and copy created by the LICENSOR. Any pattern or copy intended to be used by the LICENSEE which may vary must first be approved by the LICENSOR in writing.

EMPLOYEE  
CONTRACT

7. The LICENSEE shall execute an employment contract with each of his staff employees and provide the LICENSOR with an executed copy thereof within five days of its execution. It shall be in substantially the form set forth in Exhibit C attached hereto and made a part hereof.

EXCLUSIVE  
USE OF  
PREMISES

8. The LICENSEE's premises shall be used exclusively for license purposes. No signs, material or suggestion of any affiliation or relation to any other enterprise shall appear on the premises. The telephone shall be exclusively used and listed for license purposes. The location chosen and the lease thereon must be first approved by the LICENSOR.

LICENSOR'S  
ASSISTANCE

9. The LICENSOR agrees to assist the LICENSEE with research, surveys, employee training programs and advertising to the following extent:

a) Newsletters written as deemed necessary by the LICENSOR in order to keep the LICENSEE advised of the latest developments in the temporary personnel industry.

b) Instruction by the LICENSOR of the LICENSEE in procedures, techniques and systems at 152 West 42nd Street, New York City. It is understood that travel and living expenses during such period of instruction shall be paid by the LICENSEE.

c) The LICENSOR shall make at least two field trips in each year to the business office of the LICENSEE at the LICENSOR's own expense.

d) The LICENSOR agrees to engage in national institutional advertising to the extent it deems necessary and advisable.

e) All of the LICENSEE's billings shall be made and performed on behalf of the LICENSEE by the LICENSOR. The LICENSEE shall forward all time sheets and other necessary documents which may be required to the LICENSOR immediately upon receipt of the same by the LICENSEE. Preparation and mailing of such bills shall be made by the LICENSOR at its own expense, except that the LICENSEE shall pay the LICENSOR the cost of billboards, invoices and statements.

AUDITS

10. The LICENSEE shall keep accurate accounts in accordance with the system prescribed by the LICENSOR or its representatives, and the LICENSOR or its representatives shall be permitted full examination of such accounts during regular



business hours. Such examinations shall not exceed one per month except for good cause.

ADVERTISING

11. The LICENSEE agrees to advertise in local media, including the local classified telephone directory, and to conduct direct mailing and other promotional advertising as LICENSEE shall deem effective and reasonable.

MATERIALS

12. All stationery, advertising pieces and printed matter shall follow the LICENSOR's format.

STANDARDS

13. The LICENSEE shall maintain a minimum number of hours billed in each and every week as follows:

	<u>Date</u>	<u>No. of Hours</u>
Commencing the 2nd year, to wit	Jan. 1, 1967	750
Commencing the 3rd year, to wit	Jan. 1, 1968	1,000
Commencing the 4th year, to wit	Jan. 1, 1969	1,500
Commencing the 5th year, to wit	Jan. 1, 1970	2,000
Commencing the 6th year, to wit	Jan. 1, 1971	2,500
Commencing the 7th year, to wit	Jan. 1, 1972	3,000
Commencing the 8th year, to wit	Jan. 1, 1973	3,500

In the event the LICENSEE shall fail to meet the standards as set forth in this paragraph, the LICENSOR shall have the option to purchase the LICENSEE's business at a price determined pursuant to the provisions of paragraph 21 of this agreement. However, the LICENSEE shall have the option to cure such failure by paying the difference between the franchise fee that would have been paid if the minimum requisite hours had been attained and the actual amount paid. In determining the amount of franchise fee that would have been paid, the average rate of billing per hour over the prior twelve months period shall be used.

The LICENSOR must exercise its option to terminate under this paragraph within six weeks of any such failure of the LICENSEE to meet the standard. LICENSOR's failure to exercise this option shall not be construed to be a waiver of any subsequent failure or breach of any provision of this paragraph by the LICENSEE.

The standards provided for in this paragraph shall not apply during any period of national emergency or should the licensed area be part of a formally declared distress area, or should the LICENSEE's premises be totally destroyed not through his fault. In such latter event, LICENSEE shall diligently relocate or rebuild.

#### RATES

14. Rates for services provided by the LICENSEE shall be competitive in the area serviced by the LICENSEE and shall be established after consultation with the LICENSOR.

#### TAXES

15. The LICENSEE shall be responsible for the payment of all salaries and wages or other compensation to its employees as well as for the payment of any and all taxes. LICENSEE's failure to pay its employees or any taxes as the same become due and payable shall constitute a major breach of this agreement and release the LICENSOR of any obligations hereunder. In such event, the LICENSOR may at its option terminate this agreement in accordance with the procedure set forth in paragraph 21 and 27.

#### INSURANCE

16. The LICENSEE shall at all times maintain all insurance that may be required by law and/or deemed necessary by the LICENSOR. The LICENSOR shall make available reduced insurance costs through its master policy whenever possible. The minimum schedule of insurances is as follows:

(1) Comprehensive General Liability and (2) Non-Owned Auto -  
each to the following extents:

bodily Injury...	\$1,000,000 each person 1,000,000 each accident
Property Damage...	\$1,000,000
(3) Blanket Pollution Bond...	\$ 100,000
(4) Workmen's Compensation...	Statutory Requirements of the State in which you operate.
(5) Employer's Liability...	\$25,000

#### ASSIGNMENT

17. The LICENSEE may not assign this agreement or the license granted hereunder, nor may he sub-license without the prior written consent of the LICENSOR.

#### TERMINATION DURING TRAINING

18. The LICENSOR may at any time during the training period terminate this license agreement upon returning to the LICENSEE the license charge paid hereunder. For the purposes of this paragraph, the training period shall be considered that time in which the LICENSEE is taking instruction at the offices of the LICENSOR.

#### FAILURE TO OPEN

19. The LICENSOR may terminate this license agreement in the event the LICENSEE fails to open an office within forty five (45) days from the completion of training.

#### UNCOLLEC- TIBLE ACCOUNTS

20. In connection with the franchise fee provided for in paragraph 4, above, should any of the LICENSEE's accounts prove uncollectible, the LICENSOR will credit the franchise fee previously paid thereon, providing:

a) LICENSEE forwards the names, addresses and amounts of the accounts claimed to be uncollectible on July 1st of each year, listing only such accounts billed on or before December 31st of the

previous year. LICENSOR shall certify such list by setting forth in detail the attempts to collect and the reasons why collection could not be effected. If the LICENSOR is satisfied that the accounts are uncollectible, the LICENSEE shall be given credit for the franchise fees previously paid on such accounts. The LICENSEE shall follow the identical procedure on January 1st of each year for accounts billed on or before June 30th of the previous year.

b) At the option of the LICENSOR, all such uncollectibles, after credit having been given, may be pursued in any of the following ways: - (1) By LICENSOR assisting the LICENSEE by directly contacting the debtor, or (2) LICENSOR being subrogated to the rights of the LICENSEE, in which event upon any recovery, the balance remaining, after reimbursement to the LICENSOR of the aforesaid credit and any expense of collection, shall be remitted to the LICENSEE, or (3) LICENSOR may allow the LICENSEE to proceed further, in which case the LICENSEE agrees to remit to the LICENSOR five (5) per cent of any amounts actually recovered by the LICENSEE.

SALE OR  
BUY-OUT

21. If, for any reason, this agreement is terminated prior to the natural expiration of the term provided for herein, then the LICENSOR, within 45 days from such termination, shall submit to the LICENSEE a reasonable offer in writing for the LICENSEE's franchise. The question of reasonableness, whenever the same shall occur, if in dispute, is to be determined by arbitration. The LICENSEE, within 60 days from receipt of such offer, shall attempt to obtain a bona fide offer for his franchise from any third party. Immediately upon receipt of such bona fide offer, the LICENSEE shall transmit the same to the LICENSOR. The LICENSOR shall then have 45 days in which to exercise its option to purchase upon

the same terms and conditions. In the event the LICENSOR shall fail to exercise such option within said 45 days or if prior to such 45 days the LICENSOR releases such option in writing, then and in such event the LICENSEE shall have the power to sell to such third party, providing he first obtains:

- a) The written consent of the LICENSOR, which in this case may not be unreasonably withheld;
- b) A full assumption agreement executed by the purchaser containing the unconditional covenant that such purchaser fully assumed all of the terms and conditions of this agreement;
- c) A guarantee by the LICENSEE that for the period of six months following any transfer to a third party each and every term, condition, covenant and provision of the agreement will be performed;
- d) Since the value of the franchise reflects the goodwill resulting from our combined efforts, the purchase price to be paid by the prospective purchaser, even should such purchaser be the LICENSOR, shall be apportioned 80% to the LICENSEE and 20% to the LICENSOR.

In the event the LICENSEE shall be unable to obtain a bona fide offer within said 60 days, he binds himself to accept the reasonable offer first made by the LICENSOR.

In any of the preceding events, the LICENSEE agrees to and does bind himself to execute any and all instruments, documents and papers required to smoothly effectuate the appropriate transfer and transition.

Should the LICENSOR be the purchaser hereunder, and the amount payable to the LICENSEE is in excess of \$100,000.00, then the LICENSOR shall have the option to pay 50% of such price in



DEATH OR  
INCAPACITY

cash and the balance in equal monthly installments over a four year period. LICENSEE may at his option demand payment of 25% in cash and the balance in equal monthly installments over a three year period.

22. The LICENSOR shall be advised by the LICENSEE's legal representative of the death, incapacity or adjudicated incompetency of the LICENSEE within 30 days of any such event. The LICENSEE's legal representative shall further notify the LICENSOR within 60 days of any such event as to whether it is the intention of the LICENSEE's legal representative to continue the operation of the franchise. If the LICENSEE's legal representative advises the LICENSOR that it does not intend to so continue, then the procedure set forth in paragraph 21 shall apply, except that the LICENSEE's legal representative shall have a period of 90 days to attempt to obtain a bona fide purchaser, instead of the 60 days set forth in said paragraph. In addition, during the period prior to the transfer or sale, it is agreed that a designee of the LICENSOR shall be authorized and empowered to act as custodian and manager of the franchise on behalf of the LICENSEE's legal representative.

Should the LICENSEE's legal representative advise the LICENSOR that it intends to continue the operations of the franchise, or if no notification is received by the LICENSOR within six months of the death or incapacity of the LICENSEE, then, in either event, should the LICENSOR in its judgment determine that the person or persons who either succeed to the stock ownership or the active operation of the franchise are not capable of such operation, then the LICENSOR shall have the option to terminate this agreement and proceed according to paragraph 21.

However, the LICENSEE shall not have this option if the average hours billed per week in such six month period

a) shall exceed the appropriate standards set forth in paragraph 13, and

b) shall be equal to at least 80% of the average hours billed per week in the twelve month period immediately preceding the LICENSEE's death or incapacity.

116  
This option to terminate must be exercised by the LICENSEE within six (6) months from the death, incapacity or adjudicated incompetency of the LICENSEE. Should this option be exercised by the LICENSEE, the LICENSEE's legal representative shall have 90 days instead of 60 days to attempt to obtain a bona fide purchaser.

For the purposes of this paragraph, incapacity shall be defined as the inability of the LICENSEE to function at the LICENSEE's office for any continuous period in excess of six (6) months, or upon the certification by a physician that the LICENSEE will be unable to work for at least a six month period.

INCOR-  
PORATION

23. The LICENSEE agrees, upon the execution hereof, to do any and all things that may be required by the LICENSEE to effect the incorporation of the LICENSEE under the name of OLSTEIN'S OF GREATER HARTFORD, INC., in which corporation the LICENSEE shall be and remain the sole stockholder.

However, the LICENSEE may at his option cause the issuance of shares of stock in the corporation to his wife or children, providing he retains a majority of the outstanding shares and control of such corporation.

All certificates of stock issued by the corporation shall state on their face as follows:

"The holder of this certificate expressly assumes all of the terms, conditions and obligations of the license agreement dated September 17, 1955, between OLSTEN'S U.S.A., INC. and CONSTANTIN T. ZERBOS. This stock is non-transferable."

In order to coordinate the policy of the business towards the ends of meeting and maintaining the highest standards and greatest efficiency in the industry, and further, in order to maintain a close relationship between the parties, the LICENSEE does hereby agree that as long as this agreement shall remain in effect, a designee of the LICENSOR shall be a member of the Board of Directors of OLSTEN'S OF GREATER HARTFORD, INC. The LICENSEE further agrees to indemnify and hold harmless the LICENSOR and such designee from any claims or damages that may arise out of the operation of the said corporation. The provisions of paragraph 23 shall apply hereto.

In addition to the foregoing, the LICENSEE agrees to sign any certificate, consent or release, or any other paper that may be required, for any party who has been licensed by the LICENSOR, or the LICENSOR itself, to conduct business outside the LICENSEE's designated area, allowing such party to use the OLSTEN'S trade name and trade mark and incorporate OLSTEN'S in the name of any such business organization.



NON-AGENCY

24. The LICENSIOR shall in no way represent himself to be an agent, partner, or joint venturer of the LICENSEE and shall not in any manner encumber the credit or otherwise incur liability on behalf of the LICENSEE, and in the event that such shall occur, the LICENSEE agrees to indemnify and hold harmless the LICENSIOR in connection with any claim, liability or damage that may arise. The provisions of paragraph 24 shall apply thereto.

NON-  
COMPETITIVE

25. The LICENSEE shall use his best efforts to promote and advance his business and shall refrain from engaging in any activities that might compete in any manner directly or indirectly with the operation of temporary office personnel business.

RESTRICTIVE  
COVENANT

26. The LICENSEE acknowledges that he has seen the Certificate of Registration of the LICENSIOR's trade mark and further that he has received information as to techniques and systems which he believes to be unique and of special value to the LICENSIOR. Therefore, upon termination of this agreement for any reason, the LICENSEE shall discontinue the use of the LICENSIOR's trade name and trade mark and shall either destroy or turn over to the LICENSIOR any printed matter containing the trade name, trade mark, techniques and systems of the LICENSIOR. In addition thereto, the LICENSEE shall refrain from entering into a similar business, directly or indirectly within a radius of (a) 100 miles from the area described above and (b) 50 miles from any office bearing the OLSTEN name and trade mark, for a period of one (1) year from the date of such termination. Similar business shall include the providing of personnel whether temporary or permanent with or without fee. In the event of the termination of this agreement, the LICENSEE shall at no time identify himself as being formerly affiliated in any manner.

or form with LICENSEE except with the written consent of the LICENSOR. The provisions of this paragraph are severable. Should any court deem any portion unreasonable, such court may shorten the time or distance so as to make the provision enforceable. In any instance, the LICENSEE consents to injunctive relief without restricting the LICENSOR from demanding damages or any further and different relief as may be available.

#### TRANSFER

27. At the termination of this agreement for any reason, the LICENSEE and LICENSOR agree to effectuate the transfer and transition as expeditiously and efficiently as possible by executing any and all instruments, documents and papers as may be required. In addition, the LICENSEE shall deliver to the LICENSOR a complete list of customers together with the names and addresses of such customers' representatives, all names and addresses of staff and temporary employees for the last one year period prior to termination.

#### TERM

28. This agreement is for a term of five years and six weeks and shall become effective upon the signing hereof. It may be extended at the option of the LICENSEE for three additional five year terms provided that the standards set forth in paragraph 13 have been met and the LICENSEE is not in default. The franchise fee which shall be payable in each extended term or terms shall be the average of the franchise fees provided for in the last three franchise agreements made by the LICENSOR for other territories immediately prior to each respective extended term. The LICENSEE must give three months written notice of the exercise of the option to extend the term of this agreement prior to each extended term.

CLAIMS

29. If, for any reason, claim is asserted or action or proceedings are instituted against the LICENSOR, the maintenance of the principal copies of letters and/or patents shall be immediately delivered to the LICENSOR.

INDEMNITY

30. In the event any claim or liability is asserted against the LICENSOR or action or proceedings are instituted against the LICENSOR arising directly or indirectly from the operation, management, conduct or the maintenance of the LICENSEE's business, then and in each event the LICENSEE agrees to fully indemnify and hold harmless the LICENSOR and its representatives in connection therewith. The LICENSEE further agrees to pay all reasonable legal fees and expenses which may necessarily be incurred by the LICENSOR and its representatives as a result thereof.

BANKRUPTCY

31. This agreement shall terminate upon the commencement of bankruptcy proceedings whether voluntary or involuntary unless the same is discontinued on record within 15 days of service or filing of papers whichever is the earlier. It will likewise terminate upon the LICENSEE's making an assignment for the benefit of creditors or upon the LICENSEE being determined to be insolvent. It shall be terminable upon the option of the LICENSOR in the event the LICENSEE's office is closed for more than any ten (10) consecutive business days.

ARBITRATION

32. Any question, dispute or controversy arising out of this agreement shall be determined by arbitration within the State of New York and in accordance with the rules as set forth by the American Arbitration Association.

IN WITNESS WHEREOF,  
AS WITNESSES

MARGINAL  
TITLES

33. This agreement shall be binding upon the legal representatives, heirs and next-of-kin of the LICENSOR and the successors or assigns of the LICENSOR.

34. Marginal titles are not intended to limit the provisions of this agreement, but are merely intended as a convenience for ready reference to specific paragraphs.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

OLSTEN'S U.S.A., INC.

by: William C. Olsten

Licensor

Carlota F. Olsten

Licensor

FROM TO ASSIGNMENT BETWEEN OLSTEN'S U. S. A., INC.,  
AS LICENSOR, AND CONSTANCE T. ZERBO, AS LICENSEE,  
DATED: SEPTEMBER 17, 1955.

35. The grant of the license hereunder includes the right of the LICENSEE to operate in the County of New Haven, in the State of Connecticut. This is predicated upon the condition that an OLSTEN'S office be opened and in operation within eighteen (18) months after the first billing rendered by the OLSTEN'S Hartford office. In the event the LICENSEE fails to open an office in the County of New Haven within the prescribed period of time, the LICENSEE shall forfeit the right to operate in the County of New Haven under an OLSTEN'S franchise and shall receive a credit of \$2,500.00 towards the total license charge of \$6,000.00 upon such forfeiture.

36. The LICENSEE shall maintain a minimum number of houses billed under the New Haven franchise as follows:

	<u>No. of Houses</u>
Commencing with the 2nd year, to wit	500
Commencing with the 3rd year, to wit	750
Commencing with the 4th year, to wit	1,000
Commencing with the 5th year, to wit	1,500
Commencing with the 6th year, to wit	2,000
Commencing with the 7th year, to wit	2,500
Commencing with the 8th year, to wit	3,000

37. It is further understood that the license charge of \$6,000.00 shall be paid to the LICENSOR in the following manner,

Upon signing of the contract	\$1,000.00
Upon reaching a weekly billing of 2,000 hours	1,000.00
Upon reaching a weekly billing of 2,500 hours	1,000.00
Upon reaching a weekly billing of 3,000 hours	1,000.00
Upon reaching a weekly billing of 3,500 hours	1,000.00
Upon reaching a weekly billing of 4,000 hours	<u>1,000.00</u>
	<u>\$6,000.00</u>

In no instance shall any part of the license charge remain unpaid by the end of the fifth year. Any balance still due will be paid.

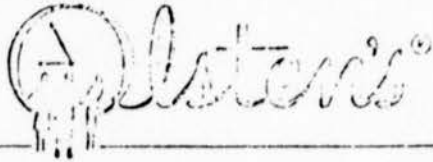
IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

OLSTEN'S U.S.A., INC.

By: William C. White  
Licensor

Carlisle T. Jones  
Licensee





TEMPORARY PERSONNEL, Inc.

152 WEST 42 STREET • NEW YORK, N. Y. 10036 • LO 3-3660

Exhibit "A"

OFFICES IN PRINCIPAL CITIES

INITIAL SUPPLIES

Payroll Systems

1,000	Payroll Checks
1,000	Payroll Cards (Employee Personal Records)
100	Payroll Register Sheets
1	Payroll Board
1	Payroll Binder
1 Box	Inkarbon

Business Supplies

3,000	Employee Application Cards
2,800	Invoices
1,500	Employee Tests
1,000	Accounts Receivable Statements
1,000	Employee Reference Checks
1,000	Employee Introduction Cards
1,000	Public Liability Statements
1,000	Welcome to Olsten's Brochures with Insert
700	Timesheets
200	Form 100.1F - Assignment Record
150	Form 100.3F - Rate/Classification Change
150	Form 100.4F - Overcharge/Undercharge
100	Form 100.9 - Request for Supplies
100	Form 100.14F - Employee Information
100	Form 100.16 - Employee Traffic
100	Urgent Request Forms
100	Indemnity Agreement Statements
100	Guarantee Statements
100	Blanket Fidelity Coverage Letter
100	Insurance Folders
50	Employee Bonding Applications
25	Form 100.15F - Change of Address/Name
4	Customer Order Books

Exhibit "B"

Stationery Supplies

1,000	Olsten Letterheads
1,000	Olsten Envelopes
1,000	Personal Business Cards
1,000	#10 Window Envelopes
1,000	#10 Window Envelopes
1,000	#6-3/4 Window Envelopes
1,000	Opening Announcements
500	3 X 5 Carbonized Cards (3 Part)
100	Olsten Reply Letters

Advertising Literature

10,000	Mailing Pieces
100	Family of Services
100	Family of Services Folders
100	The Olsten Story
100	Temporary Office Personnel
100	Olsten's Flexible Staffing
100	Thank You Cards
50	Temporary Executives & Specialists
50	Olsten's Sales Boosters
50	Olsten's Personnel Transfer Program
50	Thank You Notes with Envelopes
50	Charm Brochures

Miscellaneous

1	Stopwatch
1	Desk Name Plate

*Olsten*

APPLICATION FOR SPECIAL EMPLOYMENT

The undersigned does hereby apply for a special and/or executive position with OLSTEN'S upon the following terms and conditions:

1. That upon the approval of this application by an authorized representative of OLSTEN'S, the undersigned shall thereupon automatically become an employee of OLSTEN'S.
2. The applicant shall perform any and all services as shall be outlined and directed by OLSTEN'S, and shall devote his or her full time and energies to the work and services to be performed for OLSTEN'S, and to do all in his or her power to maintain and improve the good name and reputation of OLSTEN'S.
3. The applicant does recognize that his or her relationship with OLSTEN'S requires close confidence and special skills. Incidental to the employment, the applicant recognizes that he or she will obtain certain confidential information and/or trade secrets which the applicant agrees not to disclose during the employment and for a six (6) month period thereafter. The applicant agrees to refrain from entering into a similar business for a period of six (6) months after termination of this employment directly or indirectly within a radius of 50 miles of the last office at which the applicant was assigned.
4. The applicant acknowledges that he or she has either been in the prior employ of OLSTEN'S or has had substantial personnel work of such nature as to qualify him or her for the employment in a sensitive and/or executive level position.

Exhibit "C"

5. The restrictive covenant provisions herein have been seriously considered and have been agreed to be reasonable and necessary for the protection of OLSTEN'S. However, should this agreement be terminated for any reason within a period of ninety (90) days from the first day of employment, then and in such event the restriction set forth in paragraph 3 above shall be limited to a period of only three (3) months instead of six (6) months. In the event of a breach of the restrictive covenant which applies, it is agreed that OLSTEN'S shall be entitled to a temporary injunction or restraining order in addition to any and all other available remedies.

6. OLSTEN'S shall have the right to assign this contract to any affiliated company, firm, individual or corporation as successor in interest to OLSTEN'S or assignee of OLSTEN'S without further notice notwithstanding the personal service nature of the contract.

7. The applicant represents that he or she is available for full employment commencing  
Upon approval of this application for employment, the applicant shall commence work as of said date or such date as shall be set by OLSTEN'S in writing upon a copy of this application.

8. The contract that results from the approval of this application shall be for a term of one (1) year and shall automatically renew itself from year to year. However, either party hereto may terminate the contract at any time by giving two weeks written notice to the other by registered or certified mail return receipt requested.

Date _____	Signature of Applicant _____
City _____	Approved by _____

EXHIBIT B

AMENDMENT to License Agreement between OLSTEN'S

U. S. A., INC., as LICENSOR, and RICH D. JONES  
as LICENSEE, dated September 17, 1965.

The aforesaid License Agreement is hereby amended in the following respect:

1. The LICENSEE does hereby grant the LICENSOR the right to place Technical, Professional and Engineering personnel in the licensed territory on condition that the LICENSEE receive one and one half percent (1½%) of the gross total billing resulting therefrom. Such gross total billing shall be exclusive of per diem or other expense reimbursements. The LICENSEE shall not solicit such employees of the LICENSOR or its designee, nor shall the LICENSEE solicit or supply Technical, Professional and Engineering personnel and/or services to those firms at such times that LICENSEE is receiving said one and one half percent (1½%) of billing.

2. In all other respects, the aforesaid License Agreement shall remain in full force and effect.

OLSTEN'S U. S. A., INC.

By

William C. White  
(Licensor)

Rich D. Jones  
(Licensee)

Dated:

February 1, 1966



EXHIBIT C

AMENDMENT TO AGREEMENT MADE BY AND BETWEEN THE PARTIES HERETO  
THE 17th DAY OF SEPTEMBER 1965.

1. The licenses granted shall include the exclusive use for  
the contract purposes of all of the following registered trade marks:

- a) 697,224 Olsten's with clockface in O
- b) 718,709 Clockface alone
- c) 838,668 Clockface with figures
- d) 852,466 Clockface with different figures
- e) 865,931 Olsten in logo form

2. The LICENSEE'S time to open HANDY-ANDY offices in Hartford  
and New Haven is extended to December 31, 1969.

3. In the event the LICENSEE becomes incapacitated as defined  
in the license agreement then the requirement that the operation of either  
franchise maintaining at least eighty percent (80%) of the prior average  
hours as set forth in the said agreement shall not be applicable.  
However, the respective standards shall apply.

4. In the event of the LICENSEE'S death his legal representative  
shall have ninety (90) days instead of sixty (60) days as provided in the  
agreement to notify the LICENSOR in writing whether it is intended to  
operate the franchises.

5. The terms of the respective license agreements are extended  
so as to give the LICENSEE an option to extend the said agreements for  
~~THREE~~ two more additional five year terms. The franchise fee (royalty) payable  
in any extended term shall be as indicated in the said agreements; however,  
the same will not exceed six percent (6%) nor be less than four percent  
(4%) of gross billings.

IN WITNESS WHEREOF, the parties hereto have set their  
hands and seals this 23 day of August, 1969.

OLSTEN'S U. S. A., INC.

BY: *[Signature]*

Licensor

*[Signature]*

Licensee

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

CAPITAL TEMPORARIES, INC.  
of HARTFORD, ET AL

: CIVIL ACTION  
NO. 14749

Plaintiffs

VS.

: APRIL 24 , 1972

THE OLSTEN CORPORATION  
Defendant

: ANSWER

FIRST COUNT

1. The defendant does not have sufficient information and belief to form an opinion as to paragraph 1 of the plaintiffs' amended complaint and leaves the plaintiffs to their proof.

2. Paragraph 2 of the plaintiffs' amended complaint is admitted.

3. Paragraph 3 of the plaintiffs' amended complaint is admitted insofar as said paragraph alleges or intimates that Exhibits B and C attached thereto are some of the amendments to said agreement. The defendant denies that Exhibits B and C are all of the amendments to said agreement.

4. Paragraph 4 of the plaintiffs' amended complaint is denied.

5. Paragraph 5 of the plaintiffs' amended complaint is admitted.

6. Defendant admits paragraph 6 of the plaintiffs' amended complaint insofar as said paragraph alleges that

*Shulz  
C. B. 11/2/55*

either the defendant nor its predecessor ever had or has any equity position in any of the corporate plaintiffs. The defendant denies that the capital investment for each of the corporations was made exclusively by the plaintiff Zessos.

7. The defendant admits that the plaintiff Capital Temporaries, Inc. of Hartford is the same corporation as Olsten of Hartford County, Inc., but denies that the name of Capital Temporaries, Inc. of Hartford was changed pursuant to the laws of the State of Connecticut effective November 1, 1971.

8. The defendant admits that Capital Temporaries, Inc. of New Haven is the same corporation as Olsten of New Haven County, Inc., but denies that the name of Capital Temporaries, Inc. of New Haven was changed pursuant to the laws of the State of Connecticut effective November 1, 1971.

9. Paragraph 9 of the plaintiffs' amended complaint is denied.

10. Paragraph 10 of the plaintiffs' amended complaint is denied.

11. Paragraph 11 of the plaintiffs' amended complaint is denied.

12. Paragraph 12 of the plaintiffs' amended complaint is denied.

#### SECOND COUNT

13. The defendant incorporates herein and makes a part hereof as if hereinafter fully set forth its answers to paragraph 1 through 12 of the plaintiffs' amended complaint.

14. The defendant admits it was a franchisor of the plaintiff Constantine T. Zessos a/k/a Dean Zessos. The defendant denies that it owed a fiduciary duty to plaintiffs, Capital Temporaries, Inc. of Hartford and Capital Temporaries, Inc. of New Haven.

15. The defendant denies that it made these representations set forth in sub-paragraph (a) through (f) of paragraph 15 of plaintiffs' amended complaint in the form and content there set forth or for the purpose of inducing the plaintiff Zessos to enter into said agreement.

15.(a) The defendant denies that it represented that it would provide "continuous guidance in advertising and public relations matters".

(b) The defendant admits that it did represent that it would "engage in national institutional advertising to the extent it deemed necessary and advisable". Insofar as the allegations set forth in paragraph 15(b) of the plaintiffs' amended complaint are inconsistent with the aforementioned representation, the allegations contained in 15(b) of the plaintiffs' amended complaint are denied.

(c) The defendant admits that it did represent that "newsletters written as deemed necessary by the licensor in order to keep the licensee advised of the latest developments in the temporary personnel industry" would be mailed. Insofar as the allegations contained in paragraph 15(c) of the plaintiffs'

ated complaint are inconsistent with the aforementioned representations, the allegations in paragraph 15(c) of the plaintiffs' amended complaint are denied.

(d) Paragraph 15(d) of the plaintiffs' amended complaint is admitted insofar as it alleges or intimates that the printed materials which were supplied by the defendant to the plaintiffs were to be supplied at cost. The defendant denies paragraph 15(d) of the plaintiffs' amended complaint to the extent that said paragraph alleges or intimates that the plaintiffs were required to purchase printed materials from the defendant.

(e) Sub-paragraph (e) of the plaintiffs' amended complaint is admitted.

(f) Sub-paragraph (f) of the plaintiffs' amended complaint is admitted.

16. Paragraph 16 of the plaintiffs' amended complaint is denied.

17. Paragraph 17 of the plaintiffs' amended complaint is denied.

18. The defendant denies Paragraph 18 of the plaintiffs' amended complaint insofar as said paragraph alleges or intimates that the defendant Olsten failed to disclose to the plaintiff any operative facts. As to sub-paragraphs (a) through (e) of paragraph 18 of the plaintiffs' amended complaint, the defendant pleads as follows:



(a) The defendant denies that the Olsten name was virtually unknown to the Connecticut business community.

(b) The defendant denies that it "would not be of any assistance in delivering 'national account' business in Connecticut to the plaintiffs." The defendant denies the allegations contained in paragraph 18(b) of the plaintiffs' amended complaint to the extent that said paragraph alleges or intimates that it was entirely up to the plaintiffs to develop a business in Connecticut.

(c) The defendant denies paragraph 18(c) of plaintiffs' amended complaint insofar as said paragraph alleges or intimates that the blue collar "Handy Andy" operation was undeveloped and that the defendant Olsten would be using the plaintiffs to develop a blue collar operation which would give some value to this trade name at minimal risk and expense to the defendant.

(d) The defendant denies paragraph 18(d) of plaintiffs' amended complaint insofar as said paragraph alleges or intimates that defendant "would not provide effective national advertising, particularly in the 'Handy Andy' operation as compared with its competitor".

(e) The defendant denies paragraph 18(e) of the plaintiffs' amended complaint insofar as said paragraph alleges the defendant Olsten "would reap large amounts of money as franchise fees completely disproportionate to its contribution." The remainder of paragraph 18(e) of the plaintiffs' amended complaint is denied insofar as it alleges

that the defendant failed to disclose to the plaintiffs the operation and structure of the franchise agreement.

19. The defendant denies paragraph 19 of plaintiffs' amended complaint insofar as said paragraph alleges or imputes that the defendant failed to candidly and fairly disclose any and all operative facts to the plaintiff. To the extent that "such facts" refers to section (a) through (e) of paragraph 18 of plaintiffs' amended complaint, the defendant adopts herein as its answer to paragraph 19 its answers to section (a) through (e) of paragraph 18 of plaintiffs' amended complaint.

20. The defendant denies that there were any material misrepresentations, breach of fiduciary obligations and/or fraudulent concealment of facts on the part of the defendant. As to the remainder of paragraph 20 of plaintiffs' amended complaint, the defendant is without sufficient knowledge and information to form a belief thereon and leaves the plaintiffs to their proof.

#### THIRD COUNT

21. The defendant incorporates herein and makes a part hereof its answers to paragraph 1 through 20 of plaintiffs' amended complaint as if hereinafter fully set forth.

22. Paragraph 22 of the plaintiffs' amended complaint is denied.

23. Paragraph 23 of the plaintiffs' amended complaint is denied.

24. Defendant admits paragraph 24 of the plaintiffs' amended complaint insofar as said paragraph alleges or intimates that the defendant is in competition with temporary personnel agencies including among others the temporary personnel agency maintained by the plaintiffs.

25. Paragraph 25 of the plaintiffs' amended complaint is denied.

26. The defendant denies paragraph 26 of the plaintiffs' amended complaint insofar as said paragraph alleges that the defendant engaged in unfair methods of competition and unfair or deceptive acts or practices. As to the remainder of paragraph 26 of the plaintiffs' amended complaint, the defendant does not have sufficient knowledge and information to form a belief thereon and leaves the plaintiffs to their proof.

#### FOURTH COUNT

27. Paragraph 27 of the plaintiffs' amended complaint is admitted.

28. The defendant admits paragraph 28 of the plaintiffs' amended complaint insofar as said paragraph alleges or intimates that some of the property of the plaintiff was taken by process of attachment by a deputy sheriff in accordance with Connecticut law.

29. Paragraph 29 of the plaintiffs' amended complaint is denied.

30. Paragraph 30 of the plaintiffs' amended complaint is denied.

31. Paragraph 31 of the plaintiffs' amended complaint is denied.

FIFTH COUNT

32. The defendant incorporates herein and makes a part hereof as if he hereinafter fully set forth its answers to paragraphs 1 through 8 of plaintiffs' amended complaint.

33. Paragraph 33 of the plaintiffs' amended complaint is admitted.

34. Paragraph 34 of the plaintiffs' amended complaint is denied.

35. Paragraph 35 of plaintiffs' amended complaint is admitted insofar as it alleges or intimates that the plaintiffs paid franchise fees to the defendant in accordance with the contract between the plaintiffs and the defendant. The remainder of Paragraph 35 of the plaintiffs' amended complaint is denied.

36. Paragraph 36 of plaintiffs' amended complaint is admitted insofar as said paragraph alleges that paragraph 2 of the agreement between the plaintiffs and the defendant provides in part that "separate bookkeeping shall be kept for the 'blue collar' division". The remainder of paragraph 36 of plaintiffs' amended complaint is denied.

37. The defendant is without sufficient knowledge and information to form a belief as to paragraph 37 of plaintiffs' amended complaint and therefore leaves the plaintiffs to their proof.

38. The defendant is without sufficient knowledge and information to form a belief as to paragraph 38 of the plaintiffs' amended complaint and therefore leaves the plaintiffs to their proof.

39. The defendant is without sufficient knowledge and information to form a belief as to paragraph 39 of the plaintiffs' amended complaint and therefore leaves the plaintiffs to their proof.

40. Paragraph 40 of the plaintiffs' amended complaint is denied.

41. Paragraph 41 of the plaintiffs' amended complaint is denied.

42. Paragraph 42 of the plaintiffs' amended complaint is denied.

SIXTH COUNT

43. The defendant incorporates herein and makes a part hereof as if hereinafter fully set forth its answers to paragraphs 1 through 8 of the First Count and paragraph 33 through 42 of the Fifth Count of plaintiffs' amended complaint.

44. The defendant is without sufficient knowledge and information as to paragraph 44 of the plaintiffs' amended complaint to form an opinion thereon and leaves the plaintiffs to their proof.

45. Paragraph 45 of the plaintiffs' amended complaint is admitted.



46. Paragraph 46 of the plaintiffs' amended complaint is admitted.

47. Paragraph 47 of the plaintiffs' amended complaint is denied.

Dated at Hartford, Connecticut, this 24<sup>th</sup> day of April, 1972.

DEFENDANT  
THE OLSTEN CORPORATION

By Irving S. Ribicoff  
Irving S. Ribicoff

Matthew J. Forstadt  
Matthew J. Forstadt, both of  
Ribicoff & Kotkin  
799 Main Street  
Hartford, Connecticut 06103  
Its Attorneys

I certify that on the 24<sup>th</sup> day of April, 1972, I deposited a copy of the foregoing in the United States Mail, postage prepaid, addressed to Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut, 06103.

Matthew J. Forstadt  
Matthew J. Forstadt



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

CAPITAL TEMPORARIES, INC.  
OF NEW HAVEN, INC.

PLAINTIFFS

VS

THE OLSTEN CORPORATION

DEFENDANT

CIVIL ACTION

NO. 14749

SEPTEMBER 11, 1972

COUNTERCLAIM

1) On November 1, 1970, Olsten's of New Haven County, Inc., made a Promissory Note for \$2,450.74 payable to the order of Olsten's U.S.A., Inc., which such note was due September 1, 1971 and bore interest at the rate of 6% per annum. A photostatic copy of said note is attached hereto as Exhibit "A" and made a part hereof as if hereinafter fully set forth.

2) On September 1, 1970, Olsten's of New Haven County, Inc., made a Promissory Note for \$2,450.74 payable to the order of Olsten's U.S.A., Inc., which such note was due September 1, 1972 and bore interest at the rate of 6% per annum. Said note specifically provided therein that "this note is No. 2 of a series of 5 notes; that upon the default in the payment of any of the notes the remaining notes shall immediately become due and payable without notice." A photostatic copy of said note is attached hereto as Exhibit "B" and made a part hereof as if hereinafter fully set forth.

3) On September 1, 1970, Olsten's of New Haven County, Inc., made a Promissory Note for \$2,450.74 payable to the order of Olsten's U.S.A., Inc., which such note was due September 1, 1973

and bore interest at the rate of 6% per annum. Said note specifically provided therein that "this note is No. 3 in a series of 5 notes; that upon the default in the payment of any of the notes the remaining notes shall immediately become due and payable without notice". A photostatic copy of said note is attached hereto as Exhibit "C" and made a part hereof as if hereinafter fully set forth.

4) On September 1, 1970, Olsten's of New Haven County, Inc., made a Promissory Note for \$2,450.73 payable to the order of Olsten's U.S.A., Inc., which such note was due September 1, 1974 and bore interest at the rate of 6% per annum. Said note specifically provided therein that "this note is No. 4 in a series of 5 notes; that upon the default in the payment of any of the notes the remaining notes shall immediately become due and payable without notice." A photostatic copy of said note is attached hereto as Exhibit "D" and made a part hereof as if hereinafter fully set forth.

5) On September 1, 1970, Olsten's of New Haven County, Inc., made a Promissory Note for \$2,450.73 payable to the order of Olsten's U.S.A., Inc., which such note was due September 1, 1975 and bore interest at the rate of 6% per annum. Said note provided therein that it was note number 5 in said series. A photostatic copy of said note is attached hereto as Exhibit "E" and made a part hereof as if hereinafter fully set forth.

6) Olsten's U.S.A. Inc., is the predecessor of the Defendant, The Olsten Corporation and the Defendant, The Olsten Corporation is the successor of Olsten's U.S.A., Inc.

7) The debtor Olsten's of New Haven County, Inc. has purportedly changed its name and is now operating as Capital Temporaries, Inc. of New Haven.

8) The payment date on each of notes number 1 and 2 have passed.

9) No payments have been made on any of the aforementioned promissory notes.

10) Said notes referred to in paragraphs 1, 2, 3, 4 and 5 hereof have, by the terms thereof, become immediately due and payable without notice.

11) Defendant, The Olsten Corporation is the holder and owner of each of said notes.

12) Plaintiff Capital Temporaries, Inc. of New Haven owes the Defendant the unpaid balance of said notes; namely \$12,253.68, with interest thereon at the rate of 6% per annum from the date thereof.

13) Although demand has been made upon Plaintiff Capital Temporaries, Inc. of New Haven for payment, Plaintiff has refused and neglected to make payment thereof.

WHEREFORE, Defendant, The Olsten Corporation, counter-claims against Plaintiff, Capital Temporaries, Inc. of New Haven for:

1. \$12,253.68;
2. Interest on said notes at the rate of 6% per annum; and
3. Such other and further relief as this court deems necessary and appropriate;

DEFENDANT,

By \_\_\_\_\_  
Matthew J. Forstadt  
of  
Ribicoff & Kotkin  
798 Main Street  
Hartford, Connecticut  
Its Attorney

-4-

58

\$ 2,450.74	November 1	19 70
Ten Months	<i>after date</i> <i>promise to pay to</i>	
<i>the order of</i> Olsten's U.S.A., Inc.		
Two Thousand Four Hundred Fifty and 74/100-----		<i>Dollars</i>
<i>at</i> The Olsten Bldg., Merrick Avenue, Westbury, New York		
<i>Value received</i> 6% interest per annum		
<i>No.</i> 1	<i>Due</i> September 1, 1971	Olsten's of New Haven County, Inc.
	By	President

\$ 2,450.74	September 1,	1970
Two years	after date	I promise to pay to
the order of	Olsten's U.S.A., Inc.	
Two thousand four hundred fifty and 74/100		Dollars
Payable at	The Olsten Building, Merrick Ave., Westbury, N.Y.	
This note is No. 2 of a series of 5 notes; that upon the default in the payment of any one of the notes the remaining notes shall immediately become due and payable without notice.		
Value received	5% interest per annum	Olsten's U.S.A., Inc.
No. 2	Dated Sept. 1, 1970	by C. E. [Signature]



\$ 2,450.74 September 1, 19 70  
 Three years after date I promise to pay to  
 the order of Olsen's U.S.A., Inc.  
Two Thousand Four Hundred Fifty and 74/100 Dollars  
 Payable at The Olsen Building, Herrick Ave., Westbury, N.Y.  
 This note is No. 2 of a series of 5 notes; that upon the default in the payment of any one of the notes the  
 remaining notes shall immediately become due and payable without notice  
 Value received 6% interest per annum Alvin J. Olsen Cash  
 No. 3 Due Sept. 1, 1973 by C. J. Linn

\$ 2,450.73	September 1,	19 70
Four Years	after date	I promise to pay to
the order of Olsten's U.S.A., Inc.		
Two Thousand Four Hundred Fifty and 73/100		Dollars
Payable at The Olsten Building, Herrick Ave., Westbury, N.Y.		
This note is No. 4 of a series of 5 notes; that upon the default in the payment of any one of the notes the remaining notes shall immediately become due and payable without notice		
Value received 6% interest per annum		Colt. 1st Regt. Cavalry
No. 4	Due Sept. 1, 1976	by (C. I.) Lema

\$	2,450.73	September 1	19 70
Five Years	after date I promise to pay to		
the order of	Clsten's U.S.A., Inc.		
Two Thousand Four Hundred Fifty and 73/100-	Dollars		
at	The Clsten Bldg., Merrick Avenue, Westbury, New York		
Value received	6% interest per annum		
No. 5	Due	September 1, 1975	Clsten's of New Haven County, Inc.
		By	President

EXHIBIT "A"

\$ 2,450.74	November 1 19 70
Ten Months	after date I promise to pay to
the order of	Olsten's U.S.A., Inc.
Two Thousand Four Hundred Fifty and 74/100	Dollars
at	The Olsten Bldg., Merrick Avenue, Westbury, New York
Value received	6% interest per annum
No. 1	Due September 1, 1971
	Olsten's of New Haven County, Inc.
	By <i>[Signature]</i> President

EXHIBIT "B"

\$ 2,450.74	September 1,	1970
Two years	after date	I promise to pay to
the order of	Olsten's U.S.A., Inc.	
Two thousand four hundred fifty and 74/100		Dollars
Payable at	The Olsten Building, Herrick Ave., Westbury, N.Y.	
This note is No. 2 of a series of 5 notes; that upon the default in the payment of any one of the notes the remaining notes shall immediately become due and payable without notice		
Value received	6% interest per annum	
No. 2	Dated Sept. 1, 1970	Olsten's U.S.A. Corp. 2
		by C. E. Horn, Pres.

EXHIBIT "C"

\$ 2,450.74	September 1,	19 70
Three years	after date	I promise to pay to
the order of	Olsten's U.S.A., Inc.	
Two Thousand Four Hundred Fifty and 74/100		Dollars
Payable at	The Olsten Building, Merrick Ave., Westbury, N.Y.	
This note is No. 3 of a series of 5 notes; that upon the default in the payment of any one of the notes the remaining notes shall immediately become due and payable without notice.		
Value received	6% interest per annum	Attest of R. H. C. C. C.
No. 3	Dated Sept. 1, 1973	by C. I. C. C. C.



EXHIBIT "D"

\$ 2,450.73	September 1,	19 70
Four Years	after date	I promise to pay to
the order of Olsten U.S.A., Inc.		
Two Thousand Four Hundred Fifty and 73/100		Dollars
Payable at The Olsten Building, Herrick Ave., Westbury, N.Y.		
This note is No. 4 of a series of 5 notes; that upon the default in the payment of any one of the notes the remaining notes shall immediately become due and payable without notice.		
Value received	6% interest per annum	Attest, of Notary Public, in
No. 4	Dated Sept. 1, 1970	by (s) Lawrence J. [Signature]

EXHIBIT "E"

\$	2,450.73	September 1	19 70
Five Years	after date I promise to pay to		
the order of Clsten's U.S.A., Inc.			
Two Thousand Four Hundred Fifty and 73/100-			Dollars
at The Clsten Bldg., Merrick Avenue, Westbury, New York			
Value received 6% interest per annum			
No. 5	Due September 1, 1975 Clsten's of New Haven County, Inc.		
By			President

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CAPITAL TEMPORARIES, INC.	:	
OF NEW HAVEN, CT.,	:	
	:	
Plaintiffs	:	CIVIL ACTION
	:	
vs.	:	NO. 14749
	:	
THE OLSTEN CORPORATION,	:	DECEMBER 5, 1972
	:	
Defendant	:	

ANSWER OF THE PLAINTIFF  
CAPITAL TEMPORARIES, INC. OF NEW HAVEN  
TO DEFENDANT'S COMPLAINT

FIRST DEFENSE

1. The plaintiff Capital Temporaries, Inc. of New Haven admits signing the notes set forth in paragraphs 1 through 5, inclusive. The remainder of said paragraphs is denied.
2. As to paragraphs 6 and 11, this plaintiff has insufficient knowledge or information upon which to form a belief and, therefore, leaves the defendant to its proof.
3. Paragraph 7 is denied in its present form. The plaintiff acknowledges that it is the successor of Olsten's of New Haven, Inc., effective November 1, 1971.
4. Paragraphs 8 and 9 are admitted.
5. Paragraphs 10, 12 and 13 are denied.

SECOND DEFENSE

The plaintiff's signature on said notes was obtained by misrepresentation of the defendant through its agents, officers and employees.

- 2 -

THIRD DEFENSE

The defendant received the notes without paying any adequate consideration therefor.

PLAINTIFF - CAPITAL TRUSTS, INC. OF NEW HAVEN

BY PHILIP S. WALKER  
Philip S. Walker, of  
Day, Berry & Howard  
One Constitution Plaza  
Hartford, Connecticut 06103

I, Philip S. Walker, do hereby certify that I have this day mailed, postage prepaid, a copy of the foregoing in the United States Mail, to Irving S. Blumoff, Esquire, and Matthew J. Forstadt, Esquire, in accordance with Rule 5 of the Rules of Procedure of this Court.

PHILIP S. WALKER  
Philip S. Walker

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

CAPITAL TEMPORARIES OF  
HARTFORD, INC., et al : Civil Action No. 14749  
v. :  
THE OLSTEN CORPORATION : April 30 , 1973

MOTION FOR SUMMARY JUDGMENT

The Defendant moves, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for a Summary Judgment as to the Fifth Count of Plaintiff's Amended Complaint.

DEFENDANT

By: \_\_\_\_\_  
Irving S. Ribicoff  
RIBICOFF & KOTKIN  
799 Main Street  
Hartford, Connecticut 06103

O R D E R

The foregoing Motion having been heard, it is hereby  
ORDERED/DENIED.

BY THE COURT

\_\_\_\_\_  
Clerk

Service certified in accordance  
with Practice Book Section 80.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CAPITAL TEMPORARIES OF  
HARTFORD, INC., et al

: Civil Action No. 14749

V.

:

THE OLSTEN CORPORATION

: APRIL 10, 1973

AFFIDAVIT IN SUPPORT OF DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT  
AS TO PLAINTIFF'S FIFTH COUNT

William Olsten, being duly sworn deposes and says:

1. He is over the age of twenty-one and believes in the obligations of an oath;
2. He is Chairman of the Board and Chief Executive Officer of The Olsten Corporation;
3. He is duly authorized by the corporate defendant to make this affidavit;
4. He has personal knowledge of the facts contained herein;
5. The Olsten Corporation presently has approximately thirty franchises.



6. Said thirty franchises have approximately sixty-two franchise offices located in forty-nine cities throughout the United States and Canada;

7. The Olsten Corporation has fifty-two white collar franchise operations located in forty-nine cities throughout the United States;

8. The Olsten Corporation has ten blue collar franchise operations located in ten cities throughout the United States and Canada;

9. Constantine T. Zessos first approached The Olsten Corporation as a prospective franchisee on or about August of 1965;

10. On September 17, 1965, Constantine T. Zessos entered into a franchise agreement with the Defendant;

11. This franchise agreement is attached hereto as Exhibit A and made a part hereof as if hereinafter fully set forth;

12. Paragraph Two of Exhibit A provides that:

"The grant of the license hereunder includes the right of the LICENSEE to use the trade mark and name HANDY ANDY LABOR. All 'blue collar' personnel shall be supplied by a division of the LICENSEE designated as HANDY ANDY LABOR commencing six (6) months from the date hereof. For the purposes of standards and rate, of franchise fee, the total of all billings from whatever source shall be included."

13. The time provision in paragraph two of Exhibit A was intended to preclude Constantine T. Zessos from commencing "blue collar" operations until, at least, six months after he had commenced "white collar" operations;

14. The reason for the "negative time limitation" was to insure that Constantine T. Zessos, who had had no prior experience in the temporary personnel business, would be able to begin to acquire a degree of expertise in the temporary office personnel business prior to extending his franchise into the industrial personnel field;

15. Subsequent to entering into Exhibit A and on the same day, Constantine T. Zessos and Olsten's U.S.A., Inc. entered into a Rider thereto attached hereto as Exhibit B and made part hereof as if hereinafter fully set forth;

16. Olsten's U.S.A., Inc. was at that time a subsidiary of The Olsten Corporation which was subsequently merged into The Olsten Corporation;

17. Paragraph 35 of Exhibit B provides that:

"The grant of the license hereunder includes the right of the LICENSEE to operate in the County of New Haven, in the State of Connecticut. This is predicated upon the condition that an OLSTEN'S office be opened and in operation within eighteen (18) months after the first billing rendered by the OLSTEN'S Hartford

office. In the event the LICENSEE fails to open an office in the County of New Haven within the prescribed period of time, the LICENSEE shall forfeit the right to operate in the County of New Haven under an OLSTEN'S franchise and shall receive a credit of \$2,500.00 towards the total license charge of \$6,000.00 upon such forfeiture."

18. The time period for Zessos to exercise his right to open a "blue collar" franchise office pursuant to Exhibit A was co-extensive with the term of his franchise agreement and any extensions thereof;

19. Subsequent to the execution of Exhibit B, Constantine T. Zessos caused to be incorporated two corporations which were then known as Olsten's of Hartford County, Inc. and Olsten's of New Haven County, Inc.;

20. William Olsten was a director of both Olsten's of Hartford County, Inc. and Olsten's of New Haven County, Inc.;

21. Subsequent to September 17, 1965, and until November 1, 1971, Constantine T. Zessos, as franchisee, caused to be incorporated, and as principal shareholder managed, Olsten's of Hartford County, Inc. and Olsten's of New Haven County, Inc. as "white collar" franchise offices of The Olsten Corporation;

22. In accordance with the terms of Exhibits A and B, Constantine T. Zessos contracted to pay \$6,000 for a franchise which included Hartford, Middlesex, and New Haven counties within the State of Connecticut;

23. The aforementioned \$6,000 franchise fee was allocated as being \$3,500 for a Hartford "white collar" franchise and \$2,500 for a New Haven "white collar" franchise;

24. Zessos has not paid, and refuses to pay, the full amount of the aforementioned \$6,000 franchise fee;

25. The Olsten Corporation did not require Constantine T. Zessos to purchase a "blue collar" franchise in order to obtain a "white collar" franchise;

26. The Olsten Corporation has never required any franchisee to purchase a "blue collar" franchise in order to obtain a "white collar" franchise;

27. The Olsten Corporation has allowed a franchisee to operate a Handy Andy ("blue collar") franchise without having to simultaneously operate an Olsten Temporary Services ("white collar") franchise;

28. The Olsten Corporation has allowed a franchisee to operate an Olsten Temporary Services ("white collar") franchise without having to simultaneously operate a Handy Andy ("blue collar") franchise;

29. Constantine T. Zessos had no obligation to pay, nor did he pay, any franchise fee for the right to open a "blue collar" franchise;

30. Constantine T. Zessos did not open a "blue collar" franchise in Hartford;

31. William Olsten and Constantine T. Zessos agreed that Zessos had no obligation at any time to pay a license charge for the "blue collar" franchise.

32. The Olsten Corporation has never terminated or threatened to terminate a "white collar" franchise for failure to open a "blue collar" franchise;

33. Although there was neither requirement nor necessity to do so, Constantine T. Zessos, acting upon advice of his counsel, in or about August of 1969, requested an "extension of time" within which to open a "blue collar" franchise;

34. Thereafter, in August 1969, Olsten's U.S.A., Inc. and Constantine T. Zessos entered into an amendment to the September 17, 1965 Franchise Agreement, which purported to extend Zessos' time to open a Handy Andy office until December 31, 1969. That amendment is attached hereto as Exhibit C and made a part hereof as if hereinafter fully set forth;

35. But for Constantine T. Zessos' insistence on the inclusion of Paragraph 2 of Exhibit C, his right to open a "blue collar" franchise office would have been co-extensive with the term of his franchise agreement and any extensions thereof.

36. Subsequent to and as a result of Exhibit C, Constantine T. Zessos' right to open a "blue collar" franchise office would have expired on the last day of December 1969, had Zessos not opened a "blue collar" franchise office in either Hartford or New Haven.

37. On or about February 14, 1969, Constantine T. Zessos incorporated Handy Andy, Inc. Handy Andy, Inc. was the corporate entity designated by Zessos to operate the "blue collar" franchise office in New Haven;

38. In September of 1969, Constantine T. Zessos opened the New Haven Handy Andy;

39. The New Haven Handy Andy was voluntarily closed by Zessos in December of 1970 and upon information and belief the corporation was dissolved by forfeiture by action of the Connecticut Secretary of State;

40. Between September 17, 1965, and November 1, 1971, Constantine T. Zessos, operating as a franchisee of the Defendant, accrued franchise fees in the approximate amount of \$37,000 which are due and owing to the Defendant;



41. On or about November 1, 1971, without prior notice to William Olsten, in either of his capacities as Chairman of the Board and Chief Executive Officer of the franchisor corporation or as a member of the Boards of Directors of the franchisee's corporations, Olsten's of Hartford County, Inc. and Olsten's of New Haven County, Inc., purportedly changed their names to Capital Temporaries, Inc. of Hartford and Capital Temporaries, Inc. of New Haven, respectively;

42. On or about November 1, 1971, Constantine T. Zessos, without prior notice to the Defendant, and in derogation of the express terms of his franchise agreement, repudiated those agreements;

43. Subsequent thereto, the Plaintiffs, as "independent entrepreneurs", conducted the same business as Constantine T. Zessos had conducted as a franchisee, at the same locations, with the same administrative personnel, with the same inventory of temporary employees, with the same customers, and with the same advertised and listed telephone numbers;

44. By writ dated November 10, 1971, The Olsten Corporation brought suit in the Superior Court for Hartford County against Constantine T. Zessos, Capital Temporaries, Inc. of Hartford and Capital Temporaries, Inc. of New Haven. The complaint sought legal and equitable relief to protect The Olsten Corporation's property rights and to enforce the contractual obligations of the parties;

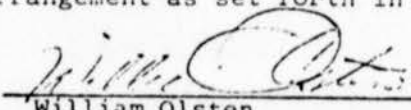
45. The pleadings in the State court action are closed, and the case is presently on the trial list;

46. By complaint dated November 24, 1971, Capital Temporaries, Inc. of Hartford, Capital Temporaries, Inc. of New Haven and Constantine T. Zessos brought this suit against The Olsten Corporation and others seeking an injunction against the enforcement and operation of the Connecticut Attachment Laws;

47. By complaint dated November 30, 1971, The Olsten Corporation brought suit against Constantine T. Zessos, Capital Temporaries of Hartford, Inc., Capital Temporaries of New Haven, Inc. and others (U.S.D.C. Conn. Civil Action 14760) seeking a preliminary injunction enjoining Constantine T. Zessos, Capital Temporaries of Hartford, Inc., Capital Temporaries of New Haven, Inc. and others from "palming off" their services as being those of The Olsten Corporation;

48. On December 7, 1971, a preliminary injunction in the case of The Olsten Corporation v. Constantine T. Zessos, et al (Civil Action No. 14760) was entered in favor of The Olsten Corporation and against the Defendants in that case;

49. Thereafter, by an amended Complaint in this action, dated January 26, 1972, Capital Temporaries, Inc. of Hartford, Capital Temporaries, Inc. of New Haven and Constantine T. Zessos first pleaded an alleged tying arrangement as set forth in Count 5 of that amended Complaint.

  
William Olsten

STATE OF NEW YORK, COUNTY OF NASSAU) SS.:

Personally appeared before me, WILLIAM OLSTEN, known by me and to me known who has sworn to the truth of the averments contained herein.

April 19, 1973 80

RIBICOFF AND KOTKIN, ATTORNEYS AT LAW, HARTFORD, CONNECTICUT  
ROBERT H. NELSON  
Notary Public, State of New York  
No. 30172000  
Qualified in Nassau County  
Term Expires March 31, 1975

Annexed as Exhibits A, B and C to  
the foregoing Affidavit of William  
Olsten were copies of the September  
17, 1965 franchise agreement, a  
rider, and an amendment thereto  
which are set forth, supra, pages A19-A44.

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

CAPITAL TEMPORARIES, INC. : CIVIL ACTION  
V. : NO. 14749  
THE OLSTEN CORPORATION : APRIL 19, 1973

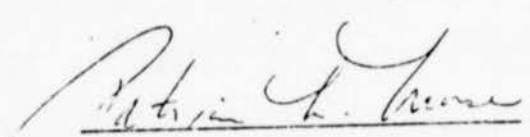
AFFIDAVIT IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT AS TO PLAINTIFF'S FIFTH COUNT

Robert Helweil, being duly sworn deposes and says:

1. He is over the age of twenty-one and believes in the obligations of an oath;
2. He is a member of the New York Bar and was at all times pertinent hereto the General Counsel for the Corporate Defendant;
3. Prior to May 1, 1969, he received several letters and other communications from Constantine T. Zessos.
4. Exhibits 2 and 3 referred to in Defendant's Brief are exact photostatic copies of enclosures received by him in correspondence from Constantine T. Zessos prior to May 1, 1969.

  
ROBERT HELOWEIL

Personally appeared before me, Robert Helweil, known by me and to me known who has sworn to the truth of the facts contained herein.

  
Notary Public

Notary Public  
Commission Expires 12/24

*Red H. L. 1011 4-2530*  
*Tarlow, Poulos, Barry & Bernstein*  
*Attorneys and Counsellors at Law*

JOSE E. TARLOW  
 JAMES E. POULOS  
 WILLIAM E. BARRY  
 WILLIAM E. BERNSTEIN  
 104 ASYLUM STREET  
 HARTFORD, CONNECTICUT 06103  
 877-3161

104 ASYLUM STREET  
 HARTFORD, CONNECTICUT 06103  
 877-3161

May 6, 1968

Mr. G. T. Zessos  
 Olsten's, Inc.  
 99 Pratt Street  
 Hartford, Connecticut

RE: Olsten's Franchise Agreement

Dear Dean:

I have reviewed your franchise agreement and have the following suggestions to make:

1. The agreement covers Hartford, New Haven and Middlesex Counties. New London is not included.
2. Handy Andy labor should have commenced in March of 1966. You should extend the date or have it eliminated. The agreement should also provide that no additional license fee is to be charged for Handy Andy. *But & the following agreement - no fee - no time limit.*
3. Paragraph 3 states that the franchise fees shall be due and payable "immediately" following gross billing of at least \$1,500.00 in any one week, but not later than six months from the date of first billing.

There is no provision concerning when payments are due thereafter. I would suggest fifteen or thirty days after you are billed.

4. In Paragraph 5, you should include language providing for arbitration if you believe national rates are unreasonable.

5. Add to Paragraph 8 the words "which approval will not be unreasonably withheld."

Mr. C. T. Zessos

6. Add to Paragraph 9 language providing that employee training, etc., will be at Licensor's expense, and to subparagraph (c) that two trips will be to assist your office - not for their purposes.

Also, add a subparagraph indicating that they will provide you with information in their possession which relates to finances and operations of your business.

7. In Paragraph 10, you might require that they give you 48 hours notice, in writing, of any examination of your books they wish to make.

8. Add to the second paragraph on page 6 of your license agreement, an exception for "reasons beyond your control" instead of "totally destroyed not through his fault."

9. In Paragraph 16 insert the word "reasonably" before necessary. *reasonable*

10. Add to Paragraph 18 "except as otherwise provided for in this agreement".

11. Add to Paragraph 20, subparagraph (a) "Licensor's determination as to the collectibility of billed accounts shall be made on a reasonable basis under all the facts and circumstances".

12. You might cut the time period down from 45 days to 30 days in Paragraph 21. You might also eliminate the provision that they get 20% of the sales price because they've contributed to "good will".

13. In Paragraph 22, the agreement states that the "legal" representative shall notify them of your death within 30 days after its occurrence. This should be extended because, in Connecticut, it often takes that much time to get a legal representative appointed. Also, the time for election and notice to continue the operation should be increased. *extend to 60 days at least - more if possible*

14. Paragraph 28 should place a limit on the franchise fee percentage, rather than be the "average" of the last three bona fide franchise agreements made by them for other territories. You



*Tarlow, Poulos, Barry & Bernstein*

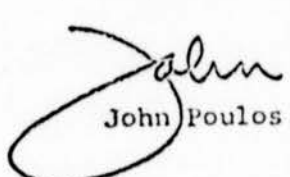
PAGE 3

Mr. C. T. Zessos

should also obtain a longer original term or additional five-year options.

15. You should get a waiver concerning your failure to open Handy Andy and New Haven within the allotted time.

Very truly yours,

  
John Poulos

JP:nfp

At for as I'm concerned - most important  
A. extend to 35 years - 50% protection - 77% protection - standing out abilities to  
D. not to exceed 6% - not less than 4% <sup>with 5% off to 10% protection</sup>  
C. if I get such - better than 20% - can hold on - go back to original required by law  
1. New Haven. if Bill wants me to open

1. Harley Policy. Bill & I have gentleman's agreement  
- no fee - no time limit

However, now that we're going public, please put it  
into context. I'm certainly going to open another Olden  
office everywhere I can. - Open Harley Policy & those  
offices at my option. - Dec 31, 1967.

Paragraph 5 - very important - "which approval will not  
be unreasonably withheld": I right to arbitrate  
fees: It may be determined to my sole discretion  
in relation to my other accounts. Could mean me  
with my other customers. Have to be fair with my  
other & all customers.

in other word - "include language providing for arbitration  
of I believe national notes are unreasonable."

Review to 22. - Should be less than 80%

note: my original term - Olden should notify me upon  
renewal of each 5 year term. Olden's notify me 15  
days before expire or 30 days to answer.

or as I suggested - loss of arbitration on either party indicates  
automatic renewal (through influence)

Spoke to B. on 10/7/68

a) extend to 7 more 5 year terms after this ✓

b) not to exceed 6% - not less than 4% ✓

c) if I get sick - revert back to the minimum standards  
rather than 80% of billing ✓

d) Hardy Army - Bill wants to be rotated then Dec. 31, 1969 ✓

if all that applies to that job - apply to Duntzman exact duties  
of openings

- 1) removal - make it automatic - lack of rotation on  
either part makes it automatic (change experience)

2) II IV - extend to more than 60 days - more if possible  
State of Conn takes sometime to get something

→ II IV B - should go back to original figures



oldsten  
temporary services

99 PRATT STREET • HARTFORD, CONNECTICUT 06103 • PHONE (203) 522-3203

I think that Oldsten's V. I. A. should absorb the loss.

I am also disturbed because I recently received two bills from you charging me interest on my New Haven notes. Alice promised me personally that Oldsten's would buy the notes back at some point at a large discount and that no interest would be charged in the meantime. He told me that the signing of the notes was only a formality, since Oldsten's is a public corporation.

Bill, I think that I deserve better consideration from them, and I would like to hear from you about straightening out these matters.

*[Signature]*

OFFICES THROUGHOUT THE UNITED STATES AND CANADA

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CAPITAL TEMPORARIES, INC. : CIVIL ACTION  
V. : NO. 14749  
THE OLSTEN CORPORATION : APRIL 16, 1973

AFFIDAVIT IN SUPPORT OF DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT  
AS TO PLAINTIFFS' FIFTH COUNT

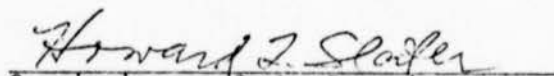
Matthew J. Forstadt, being duly sworn deposes and says:

1. He is over the age of twenty-one and believes in the obligations of an oath;
2. He is a member of the Connecticut Bar and is admitted to practice before this Court;
3. He was at all times pertinent hereto the Defendant's Attorney in connection with this case;
4. He was present at the taking of the deposition of Constantine T. Zessos on December 26, 1972 and December 27, 1972;
5. The attached transcript consisting of 210 pages, without exhibits, is an exact photostatic copy of that transcript as received by him from the Court Reporters;
6. Exhibits 4 and 5 referred to in Defendant's Brief are exact photostatic copies of documents supplied by the Plaintiffs in compliance with Defendant's Motion to Produce dated November 28, 1972. Said compliance along with an index thereto was submitted

by the Plaintiffs to the Defendant on December 18, 1972.

  
Matthew J. Forstadt

Personally appeared before me, Matthew J. Forstadt, known by  
me and to the Crown who has sworn to the truth of the facts  
contained herein.

  
Commissioner of the Superior Court

-2-

90



Capital  
Temporaries, Inc.

99 Pratt Street, Hartford, Connecticut 06103 (203) 278-1313

Dec. 14, 1977

Murdock:

I'm enclosing the letter you requested.

I would suggest however that if you need any legal information, please have your lawyer call my lawyer.

I'm not in the lake business anymore. Hardy Andy cost me quite a bit of money. I opened a Hardy Andy in New Haven, Sept. 69 on promises from Mr. Olsen of all kinds of bullshit. As usual we got nothing but promises & two months later I lost \$27,000 —

As far as my systems are concerned, if you decide to go on your own, I would suggest we meet somewhere, a town you come to, Hartford or Litchfield, and have you come to Hartford & Litchfield go over everything with. My billing & payroll system are going very well. My best for the coming year.

Best Regards,

J. S. S.

## EXHIBIT 5

**olsten**  
temporary services

99 PRATT STREET • HARTFORD, CONNECTICUT 06103 • PHONE (203) 522-3203

8/14/11

Bill:

The enclosed check represents another payment in accordance with the payment schedule set up for me. Bill, the second reason for this note is that I just got the last figures from my new accountant, Harold Shapiro. I find that in addition to the value of my time & Jerry's time, I lost \$25,378.00 in Handy-Andy. As you know, I was against this operation from the start and feel that I was harassed into going into the blue collar business in the first place. However, Jerry and I did our best, and I really feel that the losses resulted from the fact that we didn't get any backup a other support in the way of advertising, etc. This was promised us both in our agreement and in many conversations with you, and I

OFFICES THROUGHOUT THE UNITED STATES AND CANADA

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

.....  
CAPITAL TEMPORARIES, INC.,  
OF HARTFORD, et al,

Plaintiffs

VS.

CASE NO. 14749

THE OLSTEN CORPORATION,

Defendant  
.....

Deposition of CONSTANTINE T. ZESSOS,  
taken pursuant to the Federal Rules of Civil  
Procedure, at the law offices of Ribicoff and  
Kotkin, 799 Main Street, Hartford, Connecticut,  
before Joan E. Pagliuco, a Notary Public in and  
for the State of Connecticut, on Tuesday,  
December 26, 1972, at eleven-thirty in the  
morning.

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Appearances:

Messrs. DAY, BERRY AND HOWARD  
Attorneys for the Plaintiffs  
One Constitution Plaza  
Hartford, Connecticut

BY: PHILIP S. WALKER, ESQ.

Messrs. RIBICOFF AND KOTKIN  
Attorneys for the Defendant  
799 Main Street  
Hartford, Connecticut

BY: IRVING S. RIBICOFF, ESQ. and  
MATTHEW J. FORSTADT, ESQ.

Present:

JOEL B. MILLER, ESQ.

MAX BERGHEISER

oOo

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MR. RIBICOFF: I assume we are proceeding under the usual stipulations, at least to the effect that we are waiving any question about notice?

MR. WALKER: Right.

MR. RIBICOFF: Or the stenographer?

MR. WALKER: Right.

MR. RIBICOFF: And that objections as to form will be made; objections as to weight be reserved, of course, until trial, which you are entitled to have, anyway. Do you want Mr. Zessos to read and sign this?

MR. WALKER: Yes, I do, before any Notary.

With regard to the objections, there is one possible area in which there might be a problem, and which might require -- at the present time, I don't know whether you are planning to go into it or not, but because the plaintiff and the defendant are competitors locally, I think that if there is any inquiry into matters which go to the question of competition on the local level, rather than this particular law suit, that I would reserve the right to make objection and perhaps adjourn and get a protective order, if that be necessary. But I have no reason to think that we will ever reach that, but I think that should be put on the record.

MR. RIBICOFF: I doubt at the present time that

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4

we will be examining into that. If we should want to examine him into the competitive situation, go into anything that is confidential with regard to his activities dealing with the nature of competition from the time that Olsten opened up, I'm sure that we will work out a protective order in that regard.

MR. WALKER: That's fine.

CONSTANTINE T. ZESSOS, the witness named in the notice, being first duly sworn by Joan E. Pagliuco, a Notary Public in and for the State of Connecticut, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RIBICOFF:

Q Do you want to give the reporter your name and address, please?

A Constantine T. Zessos. Home address is 123 Apple Hill, Wethersfield, Connecticut.

Q How old are you, Mr. Zessos?

A Forty-one.

Q Are you married?

A Yes.

Q Any children?

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A Three.

Q What are their ages?

A Nine, eight and two.

Q What is your occupation at the present time?

A I'm President of the Capital Temporaries of Hartford and New Haven.

Q Do you own all the stock in both of those companies?

A Yes, I do.

Q You are also Director of both companies?

A Yes.

Q Who are the other Directors of those two companies?

A Jerry Pangakis and my wife, Eugena Zessos.

Q What is your educational history, starting at least from high school?

---A Stuyvesant High School. I left Stuyvesant, went to George Washington High School; did not graduate from George Washington High School; went into the Submarine Service. Upon completion, went to college in New York University; graduated with a Bachelor of Science Degree in marketing and management.

Q When was that?

A I was graduated in 1957.

Q After you graduated from N.Y.U., what did you do?

A I went to Kalamazoo, Michigan, and worked for the Southerland Paper Company for approximately six, seven months.

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Q What did you do there?

A I was in a management training program.

Q Did you leave after the management training program, during it, or what?

A During it.

Q During it?

A During.

Q I see. What were the circumstances under which you left?

A Oh, I think when I decided to leave, it was mutual agreement. I wanted to come back to the northeast, more or less, and I found I didn't like the industry.

Q All right. After you left Southerland Paper Company, what did you do?

A I came back to New York and, I believe, after a couple of months, I went to work for National Cash Register Company.

Q When was that? What was the date when you started with National Cash Register? I don't mean the exact date.

A I think -- let me see now. About 1958 or '59. I don't know.

Q What time of year; do you remember?

A Spring. I don't remember when.

Q Okay. What did you start out with at National Cash

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Register? What did you start out doing?

A I started out as a student salesman in the accounting machines and data processing division.

Q How long did you continue in that position?

A For one year.

Q And then what?

A I became a junior salesman in the accounting machines and data processing division.

Q How long did you stay in that position?

A About seven months.

Q Then what?

A Became a senior salesman in the accounting machines and data processing division.

Q How long did you stay in that position?

A Six years.

Q At the end of that six years, what did you do?  
Leave the company?

A I left the company.

Q Now, as a senior salesman, what were your duties and responsibilities with the company?

A I was in charge of a geographical area in New York City, and my responsibilities were, one, to meet a yearly quota that was given to me, established by the company; also my responsibility was to train a junior salesman, also to

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train a student salesman, to train an installation girl, and sales, and service all my accounts that I had within the territory, and I was considered a systems analyst and salesman.

Q To whom did you report?

A To a territory manager of New York.

Q I see. During the time that you worked as a senior salesman, how many junior salesmen did you have working under your tutelage?

A Two.

Q How many student salesmen?

A Two.

Q How much time did each junior salesman spend with you?

A Oh, a couple of years each, I guess, about.

Q How about student salesmen?

A Same.

Q Were there periods of time that you didn't have either a junior salesman or student salesman working for you?

A Yes.

Q What were your earnings as a senior salesman for N.C.R.?

A Eleven, twelve thousand a year maybe from N.C.R., thirteen thousand, something in that area.

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Q I'm sorry. Did I interrupt you?

A No. That's fine. Approximately. I'm not sure of the exact amount. I would have to check it.

Q How did you work? Salary? Commission?

A Strictly commission.

Q Strictly commission?

A When I was a senior salesman.

Q That's right.

A Fine.

Q No draw?

A Draw against commission.

Q Draw against commission? What was your draw against commissions?

A \$135 a week, I believe, at the time.

Q Did you have a contract with N.C.R., or did you just work?

A I had a contract.

Q What period?

A As a senior salesman.

Q As a senior salesman, a year at a time, or six months at a time, or what?

A It was a sustaining contract, as far as I know.

Q I see.

A I didn't know the legality of it.

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Q When precisely did you leave? Do you remember the date?

A I believe in 196 -- the latter part of 1963. I left 1963 or early '64.

Q Latter part of --

A 1963 or '64.

Q I see.

A I don't remember the exact date.

Q What did you do after you left N.C.R.?

A I went to work for the Empire Litho Company, selling printing, lithography, offset printing, that is.

Q When did you start with them? Right after you left?

A Right after I left N.C.R.

Q When did you leave Empire Lithography?

A I stayed with them about six months, and then went to work for Achrogravure. It's a sheet fed gravure printing company.

Q What were you doing for them?

A Salesman.

Q Selling what?

A Printing, sheet fed gravure.

Q How long did you stay with them?

A Up until 1965, about July or August. Approximately June, July, August of 1965. I'm not sure of the exact dates.

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These are all approximations.

Q Sure. On what kind of a basis did you work with Achrogravure?

A That was a salary plus a bonus arrangement.

Q I see. What was your salary?

A I don't remember.

Q What were your total earnings?

A That year?

Q Well, during the time you worked for them?

A Five thousand, six thousand. I don't know. These are just guesses, really.

Q Sure. I understand. What kind of a territory did you cover?

A There was no restricted territory. You could go anywhere you wanted, where you thought you could get some business.

Q What kind of customers did you sell to?

A All types. Industrial accounts primarily, industrial type printing.

Q To whom did you report?

A To the owner of the firm.

Q I see. How many salesmen were there in the firm?

A About six approximately.

Q This was in New York; was it?

A Englewood, New Jersey.

Q Where were you living at that time?

A In New York City.

Q How did you happen to leave Achrogravure?

A The reason I left is I took a franchise with the Olsten, the Olsten U.S.A., whatever it is.

Q As of June, 1965, what would you say your net worth was?

A \$18,000, \$20,000, something like that. It's an estimate, a wild estimate.

Q When did you first learn of the Olsten Company?

A A fellow who was a friend at the time, Tony Soupios, mentioned it to me.

Q Do you remember when it was that he mentioned this?

A I don't remember the exact date. We had lunch one afternoon, and he had been working with Olsten at the time, and mentioned it to me at that time.

Q I see. What did you do about it; anything? After he mentioned it to you, what did you do?

A Continued having lunch. As far as what do you mean, what did I do?

Q All right. Okay. He mentioned it to you sometime at lunch in 1965?

A Yes.

Q Thereafter, did you ever talk to anybody about any kind of a connection with Olsten?

A What do you mean by connection, Mr. Ribicoff?

Q Job, being a franchisee, anything?

A Spoke to Bill Olsten after we finished lunch.

Q The same day?

A Same day.

Q All right.

A Tony Soupios suggested I go back with him to the Olsten Company to meet Mr. Olsten.

Q I see. Did you know, at the time you started lunch, what business Olsten was in?

A Tony had mentioned it was a temporary personnel business.

Q Prior to the time you talked to Soupios, had you had any prior interest in or knowledge of the temporary personnel business?

A No.

Q All right. On that first day after you went back with Mr. Soupios, did you see Mr. Olsten?

A Yes.

Q What was the nature of your conversation with Mr. Olsten?

A Mr. Olsten proceeded to describe his franchising

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program and the nature of the temporary personnel business,  
and describe <sup>the</sup> Olsten organization to me.

Q What was your response to that?

A Sat and listened.

Q Is that all that happened that day?

A As far as what do you mean, what happened? We had the conversation.

Q You had a conversation, he described how the Olsten operation worked to you, and was that the end of the conversation?

A Basically, yes.

Q All right. Did you have any later conversations with Mr. Olsten or anybody else connected with the Olsten organization?

A With a Mr. Bergheiser, many conversations, Mr. Soupios, with Mr. Olsten.

Q What was the nature of those conversations? What did you discuss?

A We discussed the potential earnings. They discussed -- basically, they were selling franchises, so what we discussed, basically, was the benefit of owning a Olsten franchise was the nature of the many discussions I had with Mr. Bergheiser, Mr. Soupios and Mr. Olsten, and a Mr. Walter, Bob Walter, who, at the time, was in charge of selling franchises.

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Q I see. Did you ever request that you have a franchise with the Olsten organization?

A After the many discussions, yes.

Q I see. What happened when you asked for an Olsten franchise the first time?

A They were very pleased.

Q I see.

A I didn't ask for it. They were selling me the franchise. I did not ask for it.

Q I see. They were selling you a franchise?

A They were selling franchising at the time, yes, and they were developing my interest selling the Olsten Company to me, in order for me to invest in a franchise.

Q Prior to the time that you talked to the people at the Olsten Company, had you had any interest in going into business yourself?

A The thought had entered my mind many times.

Q What efforts had you made to go into a business other than selling for another company?

A I had a discussion with a friend of mine, who was in the printing business, printing forms, and mentioned that I was interested in going into business for myself.

Q I see. Is that all? Are there any other businesses you looked into?

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111 MAIN STREET  
HARTFORD, CONNECTICUT

205 CHURCH STREET  
NEW HAVEN, CONNECTICUT

A I had not investigated any others at the time.

Q When you talked to the people at the Olsten organization, did they, at any time, indicate to you what kind of capital you would need to become a franchisee?

A Approximate figures were given to me, not exact figures, for the capital investment.

Q What did they tell you?

A They said I would need money to carry a payroll with the corresponding amount of hours that I would build up. I needed enough money to cover the expenses for several months. I needed enough money to carry my internal payroll, enough money to run my own business, basically.

Q Did they tell you how much money that would be?

A I think the figure was approximately \$20,000, something like that approximately, fifteen to twenty. I don't remember exactly.

Q Was there any franchise fee involved, to your knowledge?

A Yes.

Q How much was that supposed to be?

A \$10,000.

Q I see. How many meetings would you say you had with people from the Olsten organization before you finally came to an agreement that you would become a franchisee?

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11 MAIN STREET  
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NEW HAVEN, CONNECTICUT



A Six, seven, eight.

Q I see. When you finally came to an agreement, what fee was set as a franchise fee?

A \$6,000.

Q When did you pay them the \$6,000?

A We amortized the payments, four payments of \$1,500 each.

Q I see. Over what period of time?

A I don't know if there was any specific period of time mentioned.

Q I see. Well, how long ultimately did it take you to make those four payments?

A Three of them have been made, according to the books. I think there is one still outstanding of \$1,500.

Q I see. Were those three payments of \$1,500 each made prior to October 30, 1970; do you recall?

A Were any of the three payments made prior to October?

Q Yes. Were all three payments you made, made prior to October 30, 1970, to your knowledge?

A Yes.

Q And the final \$1,500 payment, so far as you know, is still open?

A Yes.

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NEW HAVEN  
CONNECTICUT

225 CHURCH STREET  
NEW HAVEN, CONNECTICUT

Q Now, what kind of a franchise did you acquire from the Olsten organization?

A Could you please -- what kind? I don't understand the question, don't understand what kind.

Q Well, you were dealing with Olsten to obtain a franchise. A franchise for what kind of business? Perhaps that will help you.

A Temporary office personnel business, to supply temporary office personnel and blue collar personnel, laborer, daily, et cetera.

Q There were both white collar and blue collar temporary personnel?

A Yes, sir.

Q What territory did you have?

A Hartford, New Haven and Middlesex Counties.

Q Did you have New Haven from the outset?

A Yes, I believe so.

Q Did you then ultimately open an office or offices for the sale of services of temporary personnel, white collar and blue collar?

A I opened up an office for temporary office personnel at 99 Pratt Street in Hartford.

Q When was that?

A We effectively started doing business, I believe,

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505 CHURCH STREET  
NEW HAVEN, CONNECTICUT

in January of 1966.

Q Were you offering blue collar services at that time?

A No, sir.

Q In that office that you opened in January of 1966, what territory did you cover from that office?

A The greater Hartford area, basically.

Q What do you mean by the Hartford area? How far does that go?

A Hartford and the surrounding towns. Would you like me to name the towns?

Q No, no. That's all right.

A Fine.

Q When did you open the blue collar phase of your operations in Hartford?

A We never opened the blue collar operation in Hartford.

Q I see.

A Which was called Handy Andy.

Q When did you open your New Haven office?

A I believe in April of 1968, '67 or '68, I believe.

Q Was that also a white collar office?

A Yes, sir.

Q Did you open a blue collar operation in New Haven?

A Yes, sir.

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Q At the same time?

A No, sir.

Q When was that?

A In September of 1969.

Q Now, who chose Hartford and Middlesex County as an initial territory; you or the people at Olsten?

A The people at Olsten had a predetermined geographical area already mapped out, and that was available, Hartford and Middlesex County as one area, and New Haven County as a predetermined geographical territory, if you will, as another area.

Q I see. Those were the two that they offered you?

A I was offered Hartford first individually, and expressed interest, mentioning I didn't think Hartford would be enough of a territory. Then they suggested New Haven also.

Q I see. Did you know anything or were you familiar with either Hartford or New Haven as areas at the time you made this choice?

A I have been to Hartford a couple of times over the past eight or ten years.

Q Where did you obtain the funds to cover your start-up expenses in Hartford?

A I had some money of my own, borrowed some from a

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505 CHURCH STREET  
NEW HAVEN, CONNECTICUT

rent in Long Island, and the Olsten Corporation, Bill Olsten --  
I borrowed some from Chase Manhattan Bank, which, I understand,  
the Olsten Corporation guaranteed the note.

Q I see. Do you know how much that was?

A \$6,000.

Q Has that sum been repaid?

A Yes, sir.

Q Do you know when you finished your payments to  
Chase?

A I do not, but I paid them as they were due.

Q When were they payable, monthly or quarterly?

A I think quarterly they were payable. I'm not sure.  
I don't recall it exactly.

Q Now, was there a separate fee for the New Haven  
franchise?

A I think the way the franchise agreement was written --  
and I'd have to check it -- I think they had them separately,  
Hartford and New Haven. I'm not sure. I would have to check  
the franchise agreement.

Q How much was the fee in New Haven?

A I don't remember the exact figure. The breakdown  
of the \$6,000, I don't remember.

Q I see. One \$6,000 fee covered Hartford and New  
Haven?

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NEW HAVEN, CONNECTICUT

905 CHURCH STREET  
NEW HAVEN, CONNECTICUT

Q Yes sir.

Q Yes. White collar and blue collar?

Q Yes.

Q The breakdown, you don't know?

Q No. I would have to check the franchise agreement.

Q All right. Now, whose idea was it to take New

aven, apparently, from what you have already said.

Q I didn't say it was my idea. What I did say is that I felt Hartford in itself at the time, did not have much potential, and New Haven was suggested to me.

Q What kind of study, if any, did you make to determine what the Hartford potential was?

Q I made two or three trips up here on my own, and I had a friend of mine, who lived up here --

Q Who is that?

Q A Mr. Tom Stokem, who was the territory manager of A.C. in Hartford. We had worked together in New York, and he had some of his -- or one of his salesmen primarily got some of his customers if they, in fact, use temporary help. I, in turn, called one or two accounts and asked them if they used temporary help, and that was the extent.

Q That was the extent of your investigation?

Q I also -- there is a book put out by the Bureau of Labor Statistics that breaks down an area, the work force, by

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205 CHURCH STREET  
NEW HAVEN, CONNECTICUT



the number of clerical people within a city. In fact, I got those figures on my own.

Q When you called these people, these various accounts to ask if they used temporary personnel, where did you get the names of the accounts that you called?

A They were suggested to me by Tom Stakem of big accounts in this area.

Q How did you introduce yourself to the people you called?

A I mentioned my name, told them I was considering going in the temporary personnel business here, and if they, in fact, did use temporary personnel.

Q What kind of answers did you get? Yes or no?

A Got a "Yes" answer.

Q Now, whose suggestion was it that Middlesex be included with Hartford?

A I don't remember.

Q I see. Incidentally, when you called these accounts in Hartford, did you mention the Olsten name at all?

A No, sir.

Q This was just sort of a blind inquiry?

A Yes, sir.

Q You don't remember who it was that suggested Middlesex County be added to Hartford?

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HARTFORD, CONNECTICUT

NEW HAVEN, CONNECTICUT

24  
A No, I do not.

Q Did you make any investigation as to the temporary personnel employment possibilities in Middlesex County?

A No, sir.

Q Did you ever open an office in Middlesex County?

A No, sir. I don't think so. I don't know where Middlesex ends. No, sir, as far as I know. I don't know the exact boundary lines of Hartford and Middlesex County. I would say no.

Q Now, did you open an office in Middletown?

A No, sir.

Q Now, when the suggestion was made that New Haven be added to give you enough territory, did you make any investigation as to the value of New Haven as a market?

A No, sir.

Q When was this combination of Hartford and New Haven put together? Initially, when you signed your contract? Later? When?

A Initially, when I signed the contract. Initially.

Q Okay. Prior to the time that you entered into business in Hartford, did you make any efforts to get a S.B.A. loan?

A Yes, sir.

Q Did you have any aid and assistance from the Olsten

750 MAIN STREET  
HARTFORD, CONNECTICUT

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905 CHURCH STREET  
NEW HAVEN, CONNECTICUT

organization with regard to that loan?

A A Mr. Tony Soupios who happened to be a personal friend, was assisting me at the time.

Q I see. Was he also employed by the Olsten organization?

A He was employed by the Olsten organization.

Q Did you succeed in obtaining such a S.B.A. loan?

A No, sir.

Q Now, what discussion was there of the blue collar franchise, prior to the time you entered into an agreement between you and the Olsten people?

A Prior?

Q Yes. Prior to the time you entered into the contract?

A This was just another area that we could earn quite a bit of income, an area that the Olsten organization was expanding into.

Q Did you make any inquiry at that time as to how many blue collar operations the Olsten organization had?

A No, sir.

Q Did they tell you?

A No, sir.

Q What was the name of the blue collar organization?

A Handy Andy Labor.

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HARTFORD, CONNECTICUT

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905 CHURCH STREET  
NEW HAVEN, CONNECTICUT

Q Was the Olsten name used in connection with it?

A In what respect?

Q Was the Olsten name used in connection with Handy Andy when it was advertised or sold?

A Advertised where?

Q I withdraw that. Mr. Zessos, I show you this document, and ask whether that is a copy of the agreement that you entered into with the Olsten organization?

A Yes, sir.

Q That includes the amendment that takes New Haven into it?

A I'm not a lawyer, but I don't think this is an amendment. It is part of the contract.

MR. RIBICOFF: Okay. May we have that marked for identification.

(A document as hereinafter described was received and marked Defendant's Exhibit 1 for Identification.)

MR. WALKER: I wonder if, on the record, we could state that Defendant's Exhibit 1 for Identification is --

MR. RIBICOFF: I should at least give her the title. I'm sorry.

MR. WALKER: I was just going to give how many pages.

MR. RIBICOFF: Defendant's number 1 for

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150 MAIN STREET  
HARTFORD, CONNECTICUT

805 CHURCH STREET  
NEW HAVEN, CONNECTICUT

Identification is an agreement dated September 17, 1965, between Olsten's U.S.A., Inc., and Constantine T. Zessos, which has sixteen pages plus a rider of two pages, plus three exhibits, A, B and C.

MR. WALKER: B and C, apparently, have two pages each, and Exhibit A is one page.

Q (By Mr. Ribicoff) On September 17, you signed this agreement?

A Yes, sir.

Q Then after September 17 or before September 17, whenever it happened, what did you do about entering business, about going into business?

A What do you mean, what did I do?

Q What did you do next after you signed the agreement? What was the next thing you did about getting going?

A Came up here and looked for office space with a Mr. Bob Riedinger.

Q Who is Bob Riedinger?

A He worked for the Olsten Corporation.

Q He came up to help you in finding an office; did he?

A Yes.

Q How long did you search around Hartford for an office?

A About three hours, two, three hours.

Q Then you rented an office at that time?

A No, not at that time.

Q All right. Now, was that visit to Hartford before or after the contract was signed?

A I don't remember.

Q All right. After you made that trip to rent an office, do you remember how long after that first trip with Mr. Riedinger it was before you finally did rent an office?

A I think a month.

Q I see.

A Approximately.

Q Did you handle the rental yourself?

A Would you explain that, please? Did I handle the rental?

Q In terms of renting the office, did Mr. Riedinger participate or play any part of assist you in any way in connection with the renting of an office?

A We discussed the area where we felt it would be the best location, and that's about the extent of it.

Q Then you came up to Hartford and rented an office?

A Yes.

Q Where?

A 99 Pratt Street.

Q Now, at the time you signed the contract, how much

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CONNECTICUT

905 CROSBY STREET  
NEW HAVEN, CONNECTICUT



experience, if any, did you have in the furnishing of temporary personnel services?

A None.

Q What did you do to acquire any knowledge of how the business worked?

A Olsten had a two week or three week training program for franchisees.

Q Did you participate in that?

A Yes.

Q In connection with the program or in addition to that, did they also furnish you with forms to use in running the business?

A Yes.

Q And books or systems or manuals as to how the business should be run?

A I'm afraid you will have to ask me individually. You are asking books, systems, et cetera. I wouldn't comment on all of them.

Q I see. Did the training session give you any instruction in the systems to be used in operating an office such as you were about to open?

A Systems consisting of what, Mr. Ribicoff?

Q All right. Let's go back a bit. You came down to take the training course for two weeks. What did you do in that

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NEW HAVEN, CONNECTICUT

905 CHURCH STREET  
NEW HAVEN, CONNECTICUT

training course?

A Sat there and listened to what the Olsten people had to say in terms of filling out an application blank, an ordinary form, filling out the forms necessary to advise New York of the customer billings, training in the operation between my office in relationship to the Olsten office.

Q That's all?

A The majority of the training was filling out the proper forms and so on, the running of the office, the proper form layout and so on, and the payroll, pegboard payroll system, how to pay the temporaries, and so on.

Q Did the information, concerning which you were trained, include anything about testing temporary personnel?

A Testing, yes. Clerical testing.

Q Clerical testing for the purpose also to determine what kind of jobs they could perform?

A Determining the applicant's skills.

Q Anything else?

A The testing was basically for their skill, testing for their skills.

Q Yes. All of these forms that you learned to fill out, and these testing procedures, were these all prepared initially by Olsten?

A Yes.

150 MAIN STREET  
HARTFORD, CONNECTICUT

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CERTIFIED STENOGRAPHIC REPORTERS

205 CHURCH STREET  
NEW HAVEN, CONNECTICUT

Q After you got to Hartford to your new office, did you have a supply of forms?

A Not immediately.

Q I see. Did you order them?

A They were sent to me. They got in a little late, but they were sent to me. I got the forms.

Q They were sent to you?

A A little late, but I got them eventually.

Q After you had the forms, were you then ready to start in business?

A I was.

Q You were?

A Yes.

Q All right. What did you do? Did you start in business?

A As I said before, we effectively started doing business in January of 1966. I think we sent our first temporary out in December. We started effectively in 1966. We had to develop a rate schedule, and had to develop our rates.

Q When did you come to Hartford to start ready for work?

A I moved to Hartford the end of October of 1965. Did you ask me when I started ready for work?

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NEW HAVEN, CONNECTICUT

835 CHURCH STREET  
NEW HAVEN, CONNECTICUT

Q Yes.

A The office was not ready at the time at 99 Pratt Street. The building was being renovated. Unfortunately, the building had violated a Building Code, and was shut down. So we weren't able to start doing business until 1966, January.

Q But late October, 1965, you were here, ready to go?

A I was here, ready and waiting for the Olsten people to send me the material that I needed, and to develop a rate schedule that I could work with.

Q I see. When did you get the forms from the Olsten people?

A A week, two later.

Q A week or two later?

A Yes. I don't remember exactly.

Q How was the rate schedule worked out?

A Mr. Riedinger went into a competitor's office and asked for a rate schedule. We also -- Mr. Riedinger was also able to obtain rate schedules from two other competitors in the area, and that's how we more or less established our rates locally.

Q In other words, you set rates that were about the same as the other people were charging?

A Yes, sir.

Q Were they below what the other people were charging?

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CERTIFIED STENOGRAPHIC REPORTERS

100 CHURCH STREET  
HARTFORD, CONNECTICUT

100 CHURCH STREET  
NEW HAVEN, CONNECTICUT

A I don't know if they were higher or they were lower.  
Q Could they be competitive?

A They were competitive? Who made the final determination as to whether you should or should not follow that rate schedule? You or Olsten?

A Mr. Kiedinger is the one who suggested what we should charge for rates in this area.

Q I see. Did you question him as to how he got to those rates?

A I was aware of how he got the rates. He got our competitors' rates, and then worked around those.

Q I see. Did he discuss any variations from the rates of competitors that he was proposing that you use?

A I don't understand your question. Did we discuss any variations? I don't understand.

Q Were there any variations in the rates ultimately used when you started business, from the rates used by your competitors?

A Are you asking me were any rates different from my competitors?

Q That's right.

A I would have to check the rate schedules to see. We are talking about, I think, three different competitors. Some may have been the same. Some may have been a nickel or dime

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805 CHURCH STREET  
NEW HAVEN, CONNECTICUT

different. There is no noticeable difference. I would have to check.

Q Were the three competitors' rates for particular jobs the same, or were there variations between the competitors?

A I believe there were slight variations.

Q So to some extent, your rates also were variations of theirs?

A I would say they were competitive with.

Q Competitive?

A With the rates.

Q Were you satisfied that they were competitive when they were set?

A Mr. Riedinger told me, so I said, "Fine."

Q I see. Did he tell you these were the rates you had to use?

A These are the rates he suggested I use.

Q I see. Did he say that these were the rates Olsten Corporation wanted you to use?

A Mr. Riedinger set up the rate schedule, suggested I work with this rate schedule.

Q Because it was competitive?

A These are the rates that he felt would work in this area.

Q And enable you to compete with the other people?

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NEW HAVEN  
HARTFORD, CONNECTICUT

905 CHURCH STREET  
NEW HAVEN, CONNECTICUT



A No, sir.

Q All right. What did you do?

A I didn't set the rates. What I did was call on the  
people and introduced myself, and introduced the Olsten  
organization, that I was in the process of opening an office,  
and that we would be sending these people a formal announce-  
ment, and could I please have the name or names of the people  
who are concerned with requisitioning temporary office help.

Q So you were out trying to sell the services?

A Yes, sir.

Q Now, at that time when you were doing your initial  
marketing, am I correct in my understanding of what you said,  
that you were simply getting the names of the people with whom  
you should deal for the purpose of supplying that service in  
that company?

A I was getting the names so I could send them an  
announcement, advising them of the official opening of an  
Olsten office in this area.

Q Were you talking to them? Were you making an attempt  
to actually obtain orders at that time for services?

A No. We weren't prepared to effectively service  
at that time.

Q All right. You just wanted them to know you were  
there and you were there for Olsten; is that right?

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935 CROMWELL STREET  
NEW HAVEN, CONNECTICUT

A That we would be opening an office.

Q Okay. Now, you mentioned something about the building having problems. When did you actually get into your office at Pratt Street?

A I got in -- I was allowed in the building in November of 1963.

Q I see. When were you able to open that office?

A I had a temporary office, which was a paint locker that I was able to put my desk in and the supplies I was waiting for.

Q You had a temporary office in November, and moved into your permanent office in January?

A I believe it was sometime in January. I don't remember the exact date when my office, that I had signed the lease for, was ready. I don't remember the exact date.

Q Now, you came up and signed the lease for the office yourself; isn't that right?

A I don't know if Mr. Riedinger was with me at the time I signed the lease. I signed the lease. I don't remember the time.

Q Did you have anybody examine the lease, as to either a lawyer or anybody else examine the lease?

A I don't remember if anybody examined the lease. Riedinger looked at the lease. Excuse me. I know Bob Riedinger

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CERTIFIED STENOGRAPHIC REPORTERS

NEW HAVEN, CONNECTICUT

905 CROFT STREET  
NEW HAVEN, CONNECTICUT

Q I don't know if anybody else examined it. I don't remember.

Q You think he may have come up with you at the time you signed the lease?

A He could have. I don't remember.

Q Well, if he didn't come up with you, what did you do, did it down to New York and ask him to look at it?

A I don't remember.

Q All right. Now, in January, you now had your office available; you now had a rate schedule set. What, if anything, did you do between October and January to hire people to work for you, not temporary personnel, but people to man your office?

A We ran -- when I saw "we," I ran an ad in the Hartford paper prior to opening the office, for a permanent placement manager in the Hartford Times and the Hartford Current.

Q Did you write the ad yourself?

A Mr. Riedinger supplied the ad.

Q I see. From Olsten?

A From Olsten.

Q Did you succeed in hiring a permanent placement manager?

A Yes, we did.

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CERTIFIED STENOGRAPHIC REPORTERS

205 CHURCH STREET  
NEW HAVEN, CONNECTICUT

Q Who was that?

A Kay Warner.

Q When did she start working for you?

A I would have to check my records.

Q Approximately before or after January?

A Before January.

Q Had she had prior experience in the temporary personnel business?

A No. I don't believe so.

Q I see. Is she still working for you?

A No, sir.

Q How long did she work for you?

A Approximately two years.

Q All right. Did you hire any other employees prior to January 1?

A No, sir.

Q All right. Who is the second permanent employee you hired?

A A young lady named Scottie Daly.

Q What was her job?

A As a receptionist.

Q Is she still with you?

A No, sir.

Q How long did she stay?

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CERTIFIED STENOGRAPHIC REPORTERS

NEW HAVEN, CONNECTICUT

905 CHURCH STREET  
NEW HAVEN, CONNECTICUT

A Approximately a year.

Q All right. Who was the third permanent employee you hired?

A A Connie Jensen.

Q What was her job?

A She is an interviewer.

Q I see. When did she come to work for you?

A 1967, I believe. I would have to check her personnel record. I don't remember the dates exactly.

Q Is she still with you?

A Yes, she is.

Q Who was your next employee?

A A Susan Codraro.

Q When did you hire her?

A I hired her when Kay Warner was leaving. This is approximately five and a half years ago.

Q Is she still with you?

A Yes, sir.

Q All right. Who was your next employee?

A A Mr. Jerry Pangakis.

Q When did you hire him?

A About five years ago.

Q Was it Miss or Mrs. Codraro?

A Mrs. Codraro.

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CERTIFIED STENOGRAPHIC REPORTERS

NEW HAVEN  
CONNECTICUT

905 CHURCH STREET  
NEW HAVEN, CONNECTICUT

Q Did she have any prior experience in the temporary personnel business when she came with you?

A I don't believe so.

Q Now, what was Jerry Pangakis' job when he first came to you?

A Primarily sales.

Q I see. Had he had prior experience in selling temporary personnel services?

A No.

Q Is he still with you?

A Yes, sir.

Q Did you hire any other employees after Mr. Pangakis?

A A Barbara MacLean, who worked for me for three years as a receptionist. Scottie Daly got married and left.

Q Is she with you?

A No.

Q She has been replaced?

A She has been replaced by my present receptionist, Miss Nenortas, Maria.

Q Did you have any other employees?

A I have a bookkeeper. Well, I had a couple, one bookkeeper before. I have forgotten her name. I presently have a bookkeeper, Loraine Deptula. She is a bookkeeper.

Q How long has she been with you?

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750 MAIN STREET  
HARTFORD, CONNECTICUT

805 CHURCH STREET  
NEW HAVEN, CONNECTICUT



A Over a year.

Q All right. Now, what did you do about acquiring people to do the temporary work?

A We advertised in the classified section of the newspaper.

Q Starting when?

A I started advertising in November, I think, late November, putting word ads, little small word ads in the classified section of the paper here to try to get some temporaries to register with us.

Q Did you write the ads?

A Yes, sir.

Q When did you hire your first temporary?

A I believe it was either late November in 1965 or early December. I don't remember the exact date.

Q Well, when did you first find a job on which you could send her?

A In December, the middle of December, I think, or early December, I think, or middle. We sent her out on an assignment.

Q That was your first assignment?

A That was my first order. Do you want to congratulate me?

Q Who was the customer that you sent her to?

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A Olivetti-Underwood.

Q I see. Now, by the time you were in your permanent offices in January, 1966, how many temporary personnel people did you have on your roster?

A Four or five. On my roster or sent out? Excuse me.

Q Take your roster first?

A Roster? I imagine we had fifteen or twenty people registered with us.

Q All right. In January, how many people would you say you had actually working, temporary personnel?

A Six or seven or eight. I don't remember the figures.

Q Now, when you hired Kay Warner, who broke her in on her job?

A Who trained her?

Q Yes.

A I think a Mrs. Pat Morse from Olsten came up to train her. I don't remember. I think it was Pat Morse.

Q Thereafter, when Mrs. Warner had any problems, who did she go to, you or the Olsten people, in terms of additional knowledge as to how to run her job?

A The everyday operation of the office, I imagine she came to me. If there was any problem with the billing or any problem that involved the Olsten Company, I imagine she

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... all then.

Q How about supplies?

A We were getting our supplies from Olsten's.

Q How about Mrs. Codraro, when she came in, how did she get her training?

A We may have had Pat Morse or somebody come up to train her, train her.

Q You don't remember whether it was --

A I don't remember, I do not, if it was Pat or someone

... I think someone did come up to sit with her for a day, or whatever.

Q How about Jerry Pangakis, how did he get his training?

A What type of training?

Q Good question. He was a salesman?

A Jerry was a salesman, yes.

Q In other words, he was selling your services to customers for temporary personnel?

A Yes, he was.

Q All right. Was he given any training after he arrived?

A I trained him.

Q You trained him?

A I trained Jerry.

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Q How about your bookkeeper, did you train your bookkeeper as to how to do her work when you hired one?

A Yes, sir.

Q Okay. What kind of bookkeeping background did you have, incidently?

A As I mentioned, I took bookkeeping in college. I was also a systems analyst. I used to sell bookkeeping machines.

Q When was your first billing out of the Hartford office?

A My first billing was either in the second or third week of December of 1965.

Q When did you open your New Haven office?

A April of 1967 or '68. I said before I believe April of '67, I believe.

Q April of 1967?

A I believe so, or '68. I don't remember.

Q Who decided that the time had come to open a New Haven office? You?

A Who decided to open the New Haven office?

Q Yes.

A Well, I had to open a New Haven office with my agreement. I was reminded of that, and I opened it as soon as I possibly could.

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Q I see. Well, who decided when the time had come, though, that it was as soon as you possibly could? You?

A Yes. I assume so.

Q How did you go about it? Did you find the space in New Haven yourself?

A I went to New Haven and found a space.

Q Did anybody from Olsten help you?

A I don't remember if anybody came up.

Q What investigation, if any, did you make into New Haven at any time prior to the time you opened the office, as to whether New Haven was a good area in which to open an office?

A I had the figures from the Bureau of Labor Statistics of clerical help and related skills.

Q From that, you determined that New Haven was, indeed, a good territory?

A Well, plus Olsten had the -- I don't know the exact name, but they have a market study by area, that indicated New Haven would be a good area, broken down. I don't know the exact name, but there is a market study that Mr. Walter had, outlining Hartford and New Haven as potentially good areas for this type of industry.

Q How much capital did it take to set New Haven up in business?

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NEW HAVEN, CONNECTICUT

A About \$10,000, I think.

Q Who supplied that? You?

A I did.

Q Did you borrow any of it?

A No.

Q What did you do, take it out of the cash resources of Hartford?

A I think most of the money was my own that I had, and some -- I think Hartford lent New Haven some money from time to time.

Q You say that you were reminded by Olsten that you had an obligation to open an office in New Haven; is that right?

A The question of New Haven kept coming up, when I intended to open it.

Q I see. Well, you said "kept coming up." When did anybody at Olsten first ask you the question as to when you were going to open New Haven?

A I don't remember.

Q Pardon me?

A I don't remember.

Q Well, about how soon after you started in Hartford?

A I approximate, now, after a year, year and a half, when I was doing enough business where the Olsten people knew

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that I was making money, that the question of New Haven would, from time to time, keep coming up, when I intended to open New Haven.

Q You say this happened after the Olsten people knew that you were making money in Hartford?

A They could tell by the number of hours that I was doing, basically, that the operation was profitable.

Q Did you feel that you were on a pretty sound financial basis in Hartford at the time that you decided to open in New Haven?

A Yes, thinking I'd make money in New Haven.

Q All right. Now, when did you decide to open a Handy Andy operation?

A We decided to open it -- the opening date was September of 1969.

Q Who made the decision that you were ready to open in September of 1969?

MR. WALKER: I object to the form of the question. The premises are ready or --

MR. RIBICOFF: Just let me have the last question and answer. Perhaps I wasn't listening.

(The last question and answer were read by the reporter.)

Q (By Mr. Ribicoff) When did you decide to

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open? How soon before September, 1969?

A I think we made the final decision sometime in July, I imagine, July of 1969.

Q Your decision?

MR. WALKER: Well, I object.

A Well, that's --

Q I beg your pardon?

A It was a combined -- it was suggested I open a Handy Andy office in New Haven. That location was suggested.

Q Who suggested that location?

A Mr. Ed Margolin.

Q Who is he?

A Another ex-Olsten employee. He was in charge of the Handy Andy push that was being put on by the Olsten Corporation at the time.

Q When did this push start?

A As far as the Olsten Corporation is concerned?

Q Yes.

A I have no idea when they started pushing it.

Q Now, who, other than Ed Margolin, talked to you about opening a Handy Andy operation?

A Mr. Olsten.

Q Mr. Olsten did? I see. When did he talk to you?

A I believe it was sometime in March or April of 1969.

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Q What did he do? Did he talk to you?

A Yes, sir.

Q What did you tell him, or first of all, what did he tell you?

A He told me I had to open a Handy Andy office. It was in my contract. He said when was I going to do it.

Q I see. What did you tell him?

A I told him that I didn't know at the time, and that was it.

Q I see. What did he say to that?

A Reminded me that it was in my contract, and the conversation -- at the time, we were in the process of making an amendment to my contract, and a proviso of the amendment is that I had to open Handy Andy by December of 1965 -- '69. Pardon me, I'm sorry. 1969.

Q Well, as a matter of fact, if you will take a look at Exhibit 1 for identification in front of you, paragraph 2 on page 2, you were theoretically supposed to open a Handy Andy Labor Division within six months from the signing of the contract; weren't you?

A Yes, according -- I imagine. I'm not a lawyer. Yes.

Q You read English?

A Pardon me?

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Q You read English?

A I manage to get by, Mr. Ribicoff.

Q Fine. Now, by March of 1969, the time within which you were theoretically supposed, under your contract, to have opened the Handy Andy Labor office, that was already three years overdue; wasn't it?

A I imagine, according to the contract.

Q And yet it was in March or April of 1969 that they started talking to you about opening the Handy Andy office?

A Yes, an exerted effort.

(Discussion off the record.)

Q (By Mr. Ribicoff) After the March or April conversation with Mr. Olsten, did you have any further conversations with anybody else from the Olsten organization about opening a Handy Andy office?

A Yes.

Q Who?

A Mr. Riedinger and Mr. Margolin.

Q When was that; do you recall?

A They called us several times, constantly asking us, harassing us when we would be opening our office, our Handy Andy office.

Q What do you mean when you say "harassing"?

A Well, they kept asking us, telling us the terrific

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135 CHURCH STREET  
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potential of the earnings in Handy Andy, the new concentrated effort of the Olsten organization behind Handy Andy, and they wanted us to open one as soon as possible.

Q I see. That is harassing, telling you that it was a good thing?

A When you are constantly being called by two different people, asking you when you are going to do it, and let's do it, and let's hurry up, I thought it was a bit harassing, yes.

Q How often did they call you?

A Ed Margolin called me several times. At that point, I was not very receptive about it, so Ed Margolin decided to call Jerry Pangakis, my right-hand man, several times. He kept calling Jerry and telling Jerry what a great thing Handy Andy was.

Q How often? Weekly?

A I have no idea how often he called Jerry.

Q How often did he call you? Weekly?

A Oh, I would say he had called me eight, nine, or ten times.

Q Over what period of time?

A From the time that I had the meeting with Mr. Olsten, until, I guess, June or July, when we finally said to him, "All right, well, come up and we'll start looking at the areas."

Q Prior to June or July, you didn't make any



investigation of New Haven as an area for the Handy Andy operation?

A No, sir.

Q Did you make any investigation of Hartford as an area?

A No, sir.

Q When you made this investigation in June or July, what did you investigate, Hartford or New Haven or both?

A Ed Margolin investigated both.

Q For you?

A Yes.

Q Supplied you with a report?

A No.

Q What did he tell you? What did he supply you with?

A He felt that New Haven would be a better area for Handy Andy than Hartford, since it was more industrialized than Hartford.

Q I see. You took his word for it?

A Yes.

Q You made no independent investigation?

A Not on Handy Andy, no, sir. I relied on Olsten.

Q You relied on Margolin?

A Who worked for the Olsten organization.

Q Who worked for the Olsten organization?



A Yes, sir.

Q Did you discuss this with Mr. Olsten?

A I think Mr. Olsten must have been aware.

Q That's not what I asked you. I asked did you discuss it with Mr. Olsten?

A No. As far as the location is concerned, no.

Q Who did you first tell that yes, you were ready to open a Handy Andy operation?

A I guess it was a cumulative thing. Eventually, we decided -- I don't know if we told any one individual. It was either Margolin or Riedinger. I don't remember what individual we told.

Q Did you ever talk to Mr. Olsten himself and say, "I'm going to open up in New Haven," or that, "I have decided to open in New Haven"?

A No. I don't believe so.

Q Did he ever talk to you?

A About the opening?

Q Yes. About the location of a Handy Andy operation, whether it ought to be New Haven or Hartford?

A I don't believe so.

Q Did anybody in the Olsten organization tell you that Hartford was a better location than New Haven?

A No, sir.

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MR. RIBICOFF: All right. We might as well  
break at this point.

(Luncheon recess.)

Q (By Mr. Ribicoff) Now, just to make  
sure I understand what we are dealing with here, in March or  
April, you had your first conversation with Mr. Olsten about  
setting up a Handy Andy franchise in New Haven; is that right?

A Yes.

Q And about the same time, you also started talking  
to Mr. Margolin or Mr. Margolin started talking to you?

A Shortly thereafter.

Q Shortly thereafter. All right. As I understand  
what you said before lunch, Mr. Olsten did not talk to you  
about it again after that first conversation?

A Well, Mr. Olsten and I had many discussions about  
different things from March to the time I opened Handy Andy.  
It could have been mentioned.

Q I see.

A I don't remember.

Q All right. Now, so far as Mr. Margolin was concerned,  
at what point did he stop pursuing you about opening this  
office in New Haven?

A I imagine at the point where the decision was made.

MR. WALSH: Well, objection. I think you were

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not being responsive to Mr. Ribicoff then.

THE WITNESS: Okay.

MR. WALKER: Never mind what you imagine. I don't think he is interested in that.

MR. RIBICOFF: Let's have the question reread.

(The last question was read by the reporter.)

THE WITNESS: When we decided to open one.

Q (By Mr. Ribicoff) That, you say, was in July?

A Approximately, yes.

Q All right. When you decided in July that you would open this office in New Haven, Handy Andy, what did you then do?

A Started looking for a site.

Q I see. How long did it take you to find the spot?

A Approximately a month, approximately a month.

Q So sometime in August maybe --

A July, August.

Q -- you had an office?

A We decided on a location.

Q All right. Now, where was your Olsten office in New Haven located at that time? What was its address?

A 900 Chapel Square.

Q Where did you locate the Handy Andy operation?

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A At 394 Crown Street.

Q Was there any particular reason why you didn't locate the Handy Andy in the Olsten office that was already in existence?

A Well, we were not allowed to, didn't want to mix the two of them together.

Q What kind of a sign did you have on the door when you opened up the Handy Andy operation? What did it say?

A It said, as I recall, "Handy Andy Labor, an affiliate of the Olsten Corporation," or an affiliate of Olsten's in some way.

Q All right. Then after you found an office, what did you do; hire some personnel next?

A Yes. We put ads in the paper for a man to manage the office.

Q Did you find such a man?

A Yes.

Q What was his name?

A Ray Leonard.

Q When did you hire him, do you remember?

A Oh, I imagine a week or two before we opened.

Q I see. Did you, in terms of forms or controls or systems, use any forms or systems set up by Olsten for the purpose of a Handy Andy operation?

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955 CROUCH STREET  
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A Yes.

Q Did Olsten provide any training for either you or Mr. Leonard?

A Provided some training for Mr. Leonard.

Q I see. What kind of training did they provide for Mr. Leonard, or how did they do it?

A A Mr. Graves of the Olsten organization, and a Mr. Sullivan, at different times, came up to show Mr. Leonard the internal operation of a Handy Andy operation.

Q Who was Mr. Graves, incidently?

A Mr. Harvey Graves was the expert, if you will, as was told to me by the Olsten organization, that had successfully run many blue collar operations before he became affiliated with Olsten's. He more or less was the operational head of the Handy Andy division for Olsten.

Q I see. When was the first contact that you had with him in connection with the training process?

A I met Mr. Graves before we actually opened the Handy Andy office.

Q In connection with setting up the training?

A In connection with setting up the training, and also in connection with him telling us what a lucrative business it was, and the potential of the Handy Andy.

Q I see. Do you know when it was you first had your

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first conversation about the Handy Andy operation with Mr. Graves?

A I don't remember.

Q Was he one of the people from Olsten who suggested that you ought to open an office in New Haven?

A He told us about the merits of it, and how much money could be made operating a Handy Andy, what a very lucrative business it was.

Q I see. But was he one of the people who talked to you before you made the decision to open the Handy Andy?

A Yes.

Q I see. Did he suggest New Haven as the place?

A No.

Q He did not?

A Mr. Graves did not.

Q Mr. Graves didn't. Did he suggest Hartford?

A No.

Q He didn't suggest either place?

A No.

Q He was just talking to you about the blue collar operation generally?

A Yes.

Q Was Mr. Graves still with Olsten, to your knowledge, or was he, as of November 1, 1971, when you left?

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NEW HAVEN, CONNECTICUT

NEW HAVEN, CONNECTICUT



A I believe he was not.

Q He was not?

A With the Olsten organization.

Q I see. Now, how about Mr. Margolin, was he with the Olsten operation when you left on November 1, 1971?

A No.

Q Do you know when he left?

A I do not.

Q Did Mr. Margolin have any conversations with you about Handy Andy after he left the Olsten operation?

A No.

Q Now, other than that one conversation with Mr. Olsten and Mr. Margolin, was there anybody else in the Olsten organization who kept after you, as you put it, to open a Handy Andy operation?

A Mr. Riedinger.

Q Yes?

A Mr. Graves and Mr. Margolin. That's it.

Q All right. Now, did Mr. Riedinger suggest New Haven as the location, or was that Mr. Margolin the only one that did that?

A Could you ask me the question again?

MR. RIBICOFF: Just reread it.

(The last question was read by the reporter.)

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THE WITNESS: I don't remember if Mr. Riedinger suggested New Haven.

Q (By Mr. Ribicoff) I see.

A I don't remember.

Q Now, did anybody from the Olsten organization ever make any demand upon you that you open a Handy Andy operation in your Hartford territory?

A No.

Q Did you, at any time, pay an initial license fee for the Handy Andy franchise?

A Yes. It was part of my original franchise agreement.

Q Part of the original franchise agreement?

A Yes.

Q Did part of that original franchise agreement on Handy Andy cover both Hartford and New Haven?

A As far as I know, it did, yes.

Q I see. Will you take a look at Defendant's Exhibit 1 for Identification. Take a look at page 2, and just read it to yourself. Take a look at it. Don't read it out loud. Take a look at paragraph 2 with regard to Handy Andy, and then will you take a look at the supplement which has paragraph 35, dealing with --

MR. WALKER: That's on the rider; isn't it?

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MR. RIBICOFF: Yes, the rider.

Q (By Mr. Ribicoff) Will you take a look at paragraph 25 of that rider. Did you have any discussion with anybody, at the time this agreement was signed, as to why it was they referred only to Handy Andy Labor of greater Hartford, and said nothing about Handy Andy in New Haven?

A No, sir.

Q Did you, at any time, ask the Olsten people whether you did, indeed, have a franchise for Handy Andy in New Haven?

A I was told.

Q You were told that you did?

A Sure.

Q Did you ever discuss with the people at Olsten, the fact that in paragraph 2 of Defendant's Exhibit 1 for Identification, there was a six month limitation on the Handy Andy franchise?

A No, sir.

Q You say you don't remember when Mr. Margolin left Olsten?

A I do not.

Q Supposing I tell you that Mr. Margolin left Olsten on March 19, 1969. Does that sound reasonable?

A I don't remember.

Q You don't remember? So if Mr. Margolin continued

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NEW HAVEN, CONNECTICUT

his calls up to July, what was he doing, calling after he left Olsten?

A I don't remember when Mr. Margolin left. I think I mentioned I don't remember exactly when the phone calls were coming in.

Q Well, you said the phone calls from Mr. Margolin, with regard to New Haven, continued up to the time that you expressed your decision to open it up in July. Do you think Mr. Margolin kept on calling you after he left Olsten's?

A I don't believe he would call me after he left Olsten's.

Q Mr. Zessos, I show you this document, entitled, "Amended Complaint" in this action, dated January 26, 1972, Capital Temporaries, Inc., of Hartford, et al, versus The Olsten Corporation. Have you seen this before?

A Yes.

Q Have you read it before?

A Yes.

MR. RIBICOFF: May we have that marked for identification.

(The above-mentioned amended Complaint was received and marked Defendant's Exhibit 2 for identification.)

Q (By Mr. Ribicoff) Did you play any part in the preparation of this amended Complaint, Mr. Zessos?

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NEW HAVEN, CONNECTICUT

805 CHURCH STREET  
NEW HAVEN, CONNECTICUT

A Could you explain, did I play any part in it?

Q Yes. Well, did you supply information that went into the Complaint?

A Yes.

Q Did you see any of the drafts of it before it was in final form?

A Yes.

Q Did you make any suggestions, comments with regard to the drafts before it was put into final form?

A I thought the draft was very good.

Q Did you make any suggestions or comments with regard to it before it was put into final form?

MR. WALKER: I think I will object to that, because the paper is signed by counsel, so the question relates to communications between client and counsel, and, therefore, it seems to me we are in the privilege area, and I also would like to point out on page 5 --

MR. RIBICOFF: Yes. I'm sorry. I am glad you called that to my attention. There is some notation on page 5, made by somebody -- I don't know who -- that should not be considered part of this exhibit. It probably should have been blocked out, except I couldn't read it anyway.

We don't get to the question of privilege, Mr. Walker, because I haven't asked yet what he told you, nor do I



intend to. However, I am entitled, without regard to the question of privilege, to find out whether he did, indeed, review this, whether he made comments and suggestions. I would be inclined to agree with you at the moment, that if I asked him what those were specifically, they might be of a privileged nature, but I don't think this question is objectionable, and I will ask him to answer it.

MR. WALKER: I did not object when you were asking him did he review it. I don't have any objection if you have any questions with regard to things stated there, whether he knows anything about this or that, but what suggestions he may have made to counsel about the Complaint, it seems to me this clearly goes within the communications.

MR. RIBICOFF: I don't think that is my question. My question is whether he made any suggestions or comments. I didn't ask him what they were.

MR. WALKER: But whether he did or whether he did not to counsel, I think, comes within the privilege, and I can see no other point in asking the question other than to ascertain what, if anything, was said to counsel about legal matters.

MR. RIBICOFF: I can see very good reasons for asking the question, that have absolutely nothing to do with what he told you. I don't particularly care what he told you.

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I want the question answered. I would like to have it answered.

(The last question was read by the reporter.)

MR. WALKER: As the question now stands, it

MR. RIBICOFF: It calls for a yes or no answer.

MR. WALKER: But it includes communications to the client. I think I would advise my client that in its present form as such, it is privileged. I have no objection to suggestions to persons other than his attorneys. I will have no objection. I did not object when he was asked to review it, but whether he made any comments to his lawyers, what they were, or whether he made none at all, I think, comes within the privilege. So I think he is within his rights for refusing to answer.

MR. RIBICOFF: I call your attention to the fact that I don't believe it is a privileged communication. We are entitled to learn whether there were communications. We are free to ask that. I agree that we are not entitled to know the content of any such communications, and I do not know, at this particular time, whether I would pursue this with a motion under Rule 37, but I would caution and suggest to you that you think very carefully before you advise him not to answer. I think that is a proper question, and I do want it

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NEW HAVEN, CONNECTICUT

answered.

MR. WALKER: All right. My advice stands. He need not answer the question as presently propounded, because of privilege.

MR. RIBICOFF: May the record show that we have had a discussion. I have advised counsel of my position. Counsel has advised the witness not to answer.

Q (By Mr. Ribicoff) You have read this Complaint?

A Yes, sir.

Q With regard to the factual material in the Complaint as you know it, do you believe it to be correct?

A Yes.

Q Now, take a look at paragraph 7 in Exhibit 2 for Identification, on the second page. Are you familiar with the time that the action necessary to change the name was taken? Do you know when that was done?

A The time?

Q Yes. When did you change the name and how many days before November 1?

A The legal work was done by Day, Berry. It was the effective date of November 1, 1971. I don't know when the legal work was done.

Q When did you hold the meeting? When did you hold the

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200 CHURCH STREET  
NEW HAVEN, CONNECTICUT

meetings?

A I think October 28, we had a meeting.

Q Mr. Zessos --

A Yes, sir.

Q -- I show you this document, which, incidently, bears your signature on the third page, and ask whether you have seen that before?

A Yes, sir.

Q Does that refresh your recollection to the effect that the actions necessary to change the name of the corporation were taken on October 20, 1971?

A I don't remember the exact date that we sat down at the meeting.

MR. WALKER: Well, if you don't know, you don't know, Mr. Zessos. Just answer the question.

Q (By Mr. Ribicoff) Do you acknowledge that you signed that; that is your signature on that document?

A Yes, sir.

MR. RIBICOFF: May we have that marked for identification. Let me read it first as to what it is. That is the only copy I have for the moment. Exhibit 3 for identification is a certificate of Olsten's of Hartford County, Inc., bearing the date October 20, 1971, consisting of three pages as, apparently, being a copy of what has been filed with

the Secretary of State of the State of Connecticut.

(The above-mentioned document was received and marked Defendant's Exhibit 3 for Identification.)

Q (By Mr. Ribicoff) Mr. Zessos, take a look at Exhibit 3 for Identification. I call your attention to the first page, up on the upper right-hand corner, the date of October 20, 1971. Does that refresh your recollection that the action of the corporation was taken on or before October 20, 1971?

A It does not.

Q I call your attention to the third page of the document. Do you note the place where you have signed, you and your wife?

A Yes, sir.

Q Do you note the language up above, "We hereby declare under the penalties of false statement, that the statements made in the foregoing certificate are true."

A Yes.

Q Did you sign this?

A I did.

Q Pardon?

A I did.

Q Did you sign it on the date mentioned, October 20, 1971?

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A I don't remember the exact date.

Q Do you think that date of October 20, 1971, is right or wrong?

A I wouldn't want to make that judgment. I don't remember the date.

Q You don't remember the date. All right. Well, whatever the date was, do you remember whether you held a stockholders' meeting?

A We did have a meeting, we, myself.

Q All right. You had a meeting with yourself as the sole stockholder of the corporation; is that right?

A Yes, sir.

Q Did you have a Directors' meeting?

A No, sir.

Q You did not have a Directors' meeting?

MR. RIBICOFF: Let me have the last question and answer.

(The following question and answer were read by the reporter: Question: "Did you have a Directors' meeting?" Answer: "No, sir.")

Q (By Mr. Ribicoff) How many Directors' meetings did you have in connection with the change of name, do you remember? One or two?

A I believe one.



Q One?

MR. WALKER: May I have the question.

(The last two questions and answer were read by the reporter.)

MR. WALKER: We were referring to stockholders' meetings, I thought.

MR. RIBICOFF: Well, I asked him about a Directors' meeting.

THE WITNESS: I'm sorry.

Q (By Mr. Ribicoff) Were you confused as to whether I am talking about stockholders or directors?

A Yes, I am. I am confused as to what company you are talking about, also, Mr. Ribicoff.

Q It's Olsten's of Hartford County.

A I'm sorry.

Q Paragraph 7. All right. Well then, let's go back. On whatever date that this meeting was held, was there a Directors' meeting of Olsten's of Hartford County?

A I don't believe so.

Q Prior to the day that you took the action to change the name of the corporation, was Mr. Olsten a Director?

MR. WALKER: Referring again to Hartford?

MR. RIBICOFF: Yes. We are talking about Hartford until we talk about something else.

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A I believe so.

Q I see. Was he notified of the action?

A No.

Q Do you know why he wasn't notified of the action?

A Well, it was a meeting of the -- as I understood it, a meeting of the shareholders.

Q What did the shareholders do that day? Do you remember what you did?

A Change the name of the corporation from Olsten's of Hartford County to Capital Temporaries.

Q Is that all you did to your knowledge?

A To my knowledge.

Q Will you take a look at page 3 of Exhibit 3 for Identification, and look at question number 4, which is up near the top of the page. It says, "The above resolution was adopted by the Board of Directors and by shareholders." Was a resolution, with regard to the change of name, adopted by the Board of Directors?

A I don't know.

Q If you know?

A I don't.

Q You don't know?

A No.

Q But at any rate, you do know that you did not give

Mr. Olsten notice of the meetings held on that day?

A Yes, sir.

Q With regard to paragraph B of the Complaint which is sitting before you, I show you the certificate to the Secretary of State of Olsten's of New Haven County, Inc.

A Yes, sir.

Q You have seen that before; haven't you?

A Yes, sir.

MR. RIBICOFF: May we have that marked.

(The above-mentioned document was received and marked Defendant's Exhibit 4 for Identification.)

Q (By Mr. Ribicoff) Does Exhibit 4 for Identification refresh your recollection as to when the action was taken with regard to the change of name for Olsten's of New Haven County, Inc.?

A Not the exact date.

Q Does the date of October 20, 1971, which appears on Exhibit 4 for Identification, indicate to you that the action was taken on or before that date?

A I don't remember.

Q You don't remember? If you will take a look at the third page of that, I call your attention to question 4. Was there a Board of Directors' meeting held in connection with this change?

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A I don't remember.

Q I see. You know there wasn't a Board of Directors' meeting with regard to Olsten's of Hartford County, but you don't remember about New Haven?

A I don't remember about it. Frankly, I don't remember it.

Q You don't remember whether there was a meeting or wasn't a meeting?

A That's right.

Q Now, was Mr. Olsten a Director of Olsten's of New Haven County, Inc.?

A I don't know. I would have to check the incorporation books.

Q All right. Well, I show you the minutes of the organization meeting held by the incorporators and subscribers of Olsten's of New Haven, Inc. Will you take a look at that and see whether Mr. Olsten was or wasn't elected a Director of the corporation at that time?

A Yes.

Q He was?

A Yes. According to this, yes.

Q Do you know when he ceased being a Director of Olsten's of New Haven?

A No.

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Q Will you look through the book and see if you can find any meeting at which somebody else was elected to take his place, or in which he was removed? You can get some help from your counsel, if you wish.

A I don't understand these things.

MR. WALKER: I say for the record that I have never seen this before.

Q (By Mr. Ribicoff) At any rate, Mr. Zessos, having looked through that, you don't see any place where Mr. Zessos was removed as a Director?

A Mr. Olsten.

Q Mr. Olsten. I'm sorry.

A I honestly don't understand this, frankly, the incorporation.

Q Will you take a look at Exhibit 1 for Identification, which is before you. I call your attention to that part of paragraph 23, which appears on page 12, after the second paragraph on page 12, "In order to coordinate the policy of the business toward the ends of meeting and maintaining the highest standards and greatest efficiency in the industry, and further in order to maintain a close relationship between the parties, the licensee does hereby agree that as long as the agreement shall remain in effect, a designee of the licensor shall be a member of the Board of Directors of Olsten's

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of Greater Hartford, Inc." Presumably, there is no such provision with regard to Olsten's of New Haven County, Inc.; to your knowledge?

A I don't know.

Q I beg your pardon?

A I don't know.

Q You don't know. Well, at any rate, Mr. Olsten was, apparently, elected a Director of Olsten's of New Haven County, Inc., and ultimately simply disappeared as such Director; is that the situation to the best of your knowledge?

MR. WALKER: Well, I would like to state for the record there is a Olsten's of New Haven, Inc., shareholders' consent action that is contained in the minute book for Olsten's of New Haven County, Inc., and I just want to point that out. What the effect is, I didn't prepare what the effect is. I don't know, but I think the record should indicate that it is present.

Q (By Mr. Ribicoff) These various actions that were taken to change the names of Olsten's of Hartford County, Inc., and Olsten's of New Haven County, Inc., who prepared the paperwork on that?

A My lawyers.

Q Who was that?

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A Day, Berry and Howard.

Q Now, under your agreement with Olsten, were there franchise fees due and payable by Olsten's of Hartford County, Inc., based on the volume of business done by the company?

A Yes.

Q To your knowledge, how were they payable?

A According to --

Q Were they payable monthly, yearly, quarterly, or what?

A Monthly, I believe.

Q Monthly? Did you pay those franchise fees promptly every month?

A No.

Q I see. Did you fall in arrears in connection with such fees?

A Yes.

Q When did you first fall in arrears; do you recall?

A No.

Q Do you know to what extent you ultimately fell in arrears in the payment of franchise fees to Olsten, that is for Olsten's of Hartford County, Inc.?

A The total dollar figure?

Q Yes.

A I don't know the exact figure. I would say approximately

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\$37,000, something like that.

Q Has any part of that \$37,000 been paid?

A Yes.

Q How much?

A \$10,000.

Q The balance has not been paid?

A No.

Q How about Olsten's of New Haven County, Inc., was it also required to pay franchise fees, based on volume of business?

A Yes.

Q Were those fees paid promptly on a monthly basis?

A No.

Q They fell in arrears, too?

A Yes.

Q Do you know to what extent?

A Up to what date, I guess I'd have to ask?

Q Up to the present date, or up to November 1, 1971?

A Approximately \$12,000, \$13,000.

Q Has any part of those been paid?

A No, I don't believe so.

Q Now, how about Handy Andy, was Handy Andy of New Haven, Inc., I guess it was, required to pay franchise fees, based on volume of business?

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A Yes.

Q Were they paid?

A No.

Q Do you know when they first fell into arrears?

A When they first fell into arrears?

Q Yes.

A I don't recall ever having paid the monthly billing for Handy Andy.

Q I see. Do you know what they amounted to in total, approximately?

A A couple of thousand dollars, \$1,800, \$1,900, something like that.

Q With regard to the franchise fees in arrears for Olsten's of New Haven County, Inc., and for Handy Andy, did you eventually come a time when you sat down to settle the amount of these arrearages with Olsten?

A Yes.

Q Do you remember approximately when that was?

A Oh, let's see. I believe -- I don't remember the exact dates. Approximately --

Q Was it sometime in 1970?

A Yes. It was 1970.

Q How did that settlement take place? What did you do? Did you talk to at Olsten's?

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A Mr. Olsten and Mr. Faberman.

Q At Olsten's office?

A Yes.

Q Did you talk to them alone, or did you have your accountant or anybody else with you?

A My accountant was with me at that time.

Q Who was that?

A Mr. Hirschfeld.

Q Did Mr. Hirschfeld check any of the Olsten records when you settled these out, to determine what amount was involved?

A I don't know.

Q He was there?

A He was there.

Q Was there a discussion as to just how much was involved?

A Yes.

Q Did Mr. Hirschfeld make any attempt to verify whether the amount was correct?

A I don't know.

Q I beg your pardon?

A I don't know.

Q Did you?

A No.

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Q I show you a sheet of figures, which, apparently, was introduced as an exhibit in a recent deposition of Mr. Faberman. Did you ever see this list?

A Yes, I have.

MR. RIBICOFF: May we have that marked for identification. Exhibit 5 for identification is a statement called, "Olsten's of New Haven Analysis of Franchise Fees, Expenses and Notes Receivable, including Handy Andy."

(The above-mentioned document was received and marked Defendant's Exhibit 5 for identification.)

Q (By Mr. Ribicoff) Now, Mr. Zessos, I call your attention to the upper half of this analysis, which shows white collar fees and expenses, blue collar fees and expenses, which ultimately add up to an amount of \$12,283.68, which is indicated as being represented by five notes. Did you sign those five notes?

A Yes, I did.

Q When you signed those five notes, were you satisfied that the amounts represented were correct?

A I did not see this sheet when I signed those notes.

Q I understand that. The sheet was obviously prepared later?

A Yes.

Q Were you shown any figures to indicate how the amount

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for the notes was arrived at?

A No.

Q Your accountant didn't see any figures?

A The figure of \$12,253 was said that was owed from Olsten's of New Haven.

Q You came down with your accountant, and they said this is what you owed, and you said, "Okay," and you signed the notes?

A Not that way, no, sir.

Q How did it happen?

A It was told by Mr. Faberman that I owed twelve thousand some odd dollars from Olsten of New Haven, and that would I kindly sign the notes.

Q I see. What did you bring the accountant along for?

A For years, we have been trying to get the correct figures from Olsten's. I also wanted the accountant to come along to use him as a sounding board for any financial figures.

Q Didn't the accountant check to see whether the figures that were given you were satisfactory, as far as he was concerned?

A I can't talk for the accountant.

Q Did the accountant ask for any figures?

A You will have to ask the accountant.

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Q Mr. Zessos, you were there; weren't you?

A I was there.

Q Okay. The accountant was there?

A Yes, he was.

Q Mr. Faberman was there?

A Yes, he was.

Q The three of you talked together?

A Yes, sir.

Q During the course of that conversation, did the accountant say anything about showing the accountant how Mr. Faberman arrived at that figure of \$12,250, approximately;

A I don't recall.

Q You don't recall?

A No, sir.

Q Didn't say a word?

A I don't know. About the total figure, I don't recall a conversation leading up to it.

Q You don't recall any conversation leading up to it?

A About the figure?

Q Yes. About the figure.

A No, sir.

Q You brought the accountant down to check the figures, and he kept quiet, and you went away; is that what happened?

A The accountant came down to sit with me, because we

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discussed certain, you know, things, conditions about the figures.

Q I see. What conditions were those that you discussed with your accountant?

A Well, I was asked to sign the notes.

Q No, no, no. You discussed certain things, you said, with your accountant, and that's why you brought him down. What did you discuss with your accountant before you brought him down-to the Olsten office?

A I wanted him there to make sure that I wasn't being double-talked, as far as the figures were concerned, from Mr. Faberman.

MR. WALKER: Mr. Zessos, listen to the question. It asked what did you and the accountant talk about.

Q (By Mr. Ribicoff) Before you got there?

A I don't remember.

Q All right. Didn't you tell the accountant that you wanted him to check the figures to make sure they were right, whatever they were?

A I imagine I did.

Q You did; didn't you?

A I don't recall.

Q You don't have to imagine it; do you? You did; didn't you?

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A I don't recall exactly what I said to my accountant at that time.

Q Did you pay your accountant for making this trip --

A Yes, I did.

Q -- to Long Island and back?

A Yes, I did.

Q You paid him to come down and do nothing?

MR. WALKER: Well, I object to that. That's argumentative.

MR. RIBICOFF: That's also proper. This is a hostile witness, and it is a proper question.

MR. WALKER: Well, it certainly does not reflect what was said.

MR. RIBICOFF: I don't know what was said yet. That's why I am trying to find out.

Q (By Mr. Ribicoff). Is it your position, Mr. Zessos, that you took your accountant, you paid him for a trip down to Long Island, and one of the purposes of this trip was to check as to whether the figures were right, and yet you gave no instructions to the accountant that he was to do anything?

A There were going to be certain negotiations there, and I wanted my accountant to be there.

Q Were there negotiations?

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86

A Yes.

Q What were the negotiations?

A Regarding the notes that I signed.

Q That's right. And part of the negotiations was the amount of the notes; isn't that right?

A Yes, sir.

Q Did your accountant participate in these negotiations?

A I am the one that basically discussed the notes.

Q Was the accountant there while you discussed it?

A He was there while we discussed it, right.

Q Did you ask to see any figures showing how Olsten's got at that amount, the total amount for the notes?

A I don't remember.

Q You don't remember?

A No, sir.

Q So you agreed on the amount?

A Mr. Faberman said I owed that amount, and I said, "Fine."

Q You said, "Okay"?

A Right.

Q Did Mr. Faberman ask you what your accountant, Mr. Hirschfeld, was doing there?

A No. They knew he was coming down with me.

Q I see. Mr. Hirschfeld said nothing?

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A I don't recall what Mr. Hirschfeld said.

Q He didn't look at any figures?

A I don't recall.

Q But at any rate, Mr. Hirschfeld was there and, in his presence, you agreed to this \$12,253.68; is that right?

A Yes, sir.

Q Did you sign the notes at that time?

A Yes. I don't know if I signed them at that time. I signed them, though.

Q You signed them ultimately?

A I signed the notes.

Q Now, taking a look at the figures now, does this amount, which is the total white collar fees and expenses, total white collar fees, \$11,821.21 less a cash payment on April 10, 1970, balance \$10,821.21, does that agree with your recollection as to the amount you were in arrears on white collar fees?

A I do not recall the exact figures I was in arrears.

Q So as far as you know, is that correct?

A So far as I know.

Q I see. You don't remember whether it was twenty-one cents or not, but you remembered that it was approximately \$10,800; don't you?

A At that time, I was taking the figures that Faberman

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was giving to me, and going along with it.

Q You never checked them?

A Not at that point, no.

Q Did you check them later?

A When you say later --

Q After the conference, did you check the figures?

A No.

Q Did your accountant, at any time after the conference, check the figures?

MR. WALKER: From that time to this?

Q (By Mr. Ribicoff) After the conference, yes, from that time to this?

A To this time?

Q To this time?

A My present accountants have analyzed the figures.

Q I see. When did they do that?

A About six, eight, nine months ago.

Q I see. Who are your present accountants?

A Siskind and Shapiro.

Q When did you hire them?

A About a year and a half ago.

Q Now, during all the time that Mr. Hirschfeld represented you, he did not, to your knowledge, at any time check these figures as to what was in New Haven, to see if they

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were correct?

A I don't know what he did.

Q Did you ever ask him whether he had checked them to see if they were correct?

A I don't recall.

Q When you hired Siskind and Shapiro, did you ask them to check to see whether your accounts were in order?

A Yes.

Q You did? When did you first ask them?

A When I first decided to use them as accountants. I asked them, at some point, to please analyze my complete financial records, and let me know where I stood at that point.

Q Did they make an analysis with regard to the question of whether the notes, indeed, represented what was due in terms of franchise fees out of the New Haven and Handy Andy operations?

A Yes, they did.

Q They did? Did they say these figures were correct?

A They said the figures included part of the Handy Andy franchise.

Q In other words, about \$1,400 worth; is that right?

A Yes.

Q So that did they reach the conclusion that as between the white collar and the blue collar, the total amount, indeed,

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was \$12,253.68?

A Yes.

Q And that \$10,833.16 of it was white collar, and \$1,452 was blue collar; is that right?

A Yes.

Q Mr. Zessos, I show you a document entitled, "Counter-Claim" in the matter of Capital Temporaries, Inc., of Hartford versus The Olsten Corporation, dated September 11, 1972, and ask whether you have ever seen that?

A Yes.

MR. RIBICOFF: May we have that marked for identification.

(The above-mentioned Counter-Claim was received and marked Defendant's Exhibit 6 for Identification.)

Q (By Mr. Ribicoff) Now, Mr. Zessos, I show you the document called "Answer of the Plaintiff" in the same action, dated December 5, 1972, and ask whether you have seen that?

A This is the first time. I don't remember this one. Yes. I have seen this one.

MR. RIBICOFF: May we have that marked for identification.

(The above-mentioned Answer was received and marked Defendant's Exhibit 7 for Identification.)

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-181-

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Q (By Mr. Ribicoff) Now, Mr. Zessos, the second defense in Exhibit 7 for Identification says, "The Plaintiff's signature on said note was obtained by misrepresentation of the defendant through its agents, officers and employees." Would you tell us what the misrepresentation is that you claim?

A When I signed these notes, Mr. Faberman asked me to do it as a favor. He said that he would buy these notes back at a very nominal fee, that they had no intention of collecting these notes, and just asked me to do it, that he needed them because he was a public corporation, and I signed them on that basis.

Q I see. Did he tell you why it was that they proposed not to collect these notes?

A Mr. Faberman knew that I was not making any money in Olsten's of New Haven.

Q How did he know that?

A Well, I have told him.

Q You told him?

A And they were aware by the number of hours I was doing. Would you repeat the question to me?

(The following questions and answers were read by the reporter: Question: "Did he tell you why it was that they proposed not to collect these notes?" Answer: "Yes.")

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Felberman knew that I was not making any money in Olsten's of New Haven."

Question: "How did he know that?" Answer: "Well, I have told him."

Question: "You told him?" Answer: "And they were aware by the number of hours I was doing."

Q (By Mr. Ribicoff) Was there any other reason why they were proposing not to collect it, other than the fact that you were not making money in Olsten's of New Haven?

A I wouldn't have signed the notes otherwise.

Q Why was that?

A Because I felt that there was no need. They knew I wouldn't pay them, because I wasn't making any money in New Haven.

Q I see. Do you know what part of your contract with Olsten, which is Exhibit 1 for identification, provides that you don't pay franchise fees unless you are making money?

A No.

Q Do you know whether there is such a provision in the contract?

A I don't believe there is.

Q I see. Well, did anybody ever tell you, before or after the contract was signed, that franchise fees would come

due only if you made money?

A No.

Q I see. What was your theory as to why you were not required to pay the franchise fees unless you made money?

A It's not a matter of requiring. It's an agreement that Mr. Faberman and I made that those notes would not be collectable. That's why we made them for five years.

MR. WALKER: Excuse me, Mr. Zessos. I don't think you understood the question.

MR. RIBICOFF: Let's reread it.

(The last question was read by the reporter.)

THE WITNESS: I had no theory about it either way.

Q (By Mr. Ribicoff) I see. In other words, you were holding up the payment of the franchise fees until you made money in New Haven? Was that the reason why you held up those payments?

A No.

Q Why did you withhold the payments?

A We weren't making enough in New Haven to pay. That's why I didn't pay them.

Q Well, looking at Exhibit 5 for Identification for the moment, at the time, February, 1969, \$337, at the time that you failed to make that payment, which I assume came due in

March, you did so because you weren't making any money; is that right?

A The reason -- I just never paid them.

Q Did you have any reason for it?

A Not really.

Q Not really? Okay.

A They were never asked. They<sup>never</sup> asked me to pay them.

Q So each month you continued to defer the fees; is that right?

A Yes.

Q I beg your pardon?

A Yes.

Q So you kept on accumulating these monthly payments, not paying them, and then finally there came a time when Mr. Faberman asked you to pay; isn't that so?

A Yes.

Q So you came down, and he asked you to sign the notes, because he wanted some record of their being owed; is that right?

A I guess so. I don't know why he wanted the notes.

Q So you signed the notes?

A Yes.

Q And your accountants tell you that the amount of the notes was correct; is that right?

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A Yes.

Q You still haven't paid them?

A Correct.

Q There is no contract, nothing in your contract with Olsten, to your knowledge, that makes it permissible for you to fail to pay your franchise fees because of the fact you are not making money?

A Yes.

Q Now, you were also in arrears with regard to your franchise fees in Hartford; weren't you?

A Yes.

Q What was the reason for not paying those?

A Just laxity on my part, I guess.

Q I see. You were making money in Hartford; weren't you?

A Yes.

MR. RIBICOFF: I think we are about to go into another subject. Perhaps we ought to take our recess.

(Brief recess.)

Q (By Mr. Ribicoff) Let me see if I can clarify one or two questions. Did Mr. Faberman make any other representations to you about the notes? You said that he said that they would buy them back at a discount; is that right?

A At a very nominal charge.

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Q At a very nominal charge. Is that all he said about it?

A He also said there would be no interest charge on the notes.

Q Anything else?

A And, of course, I wasn't told that Handy Andy was part of the notes I was signing. I wasn't advised of that.

Q Did you ask?

A They were for Olsten's of New Haven County. I signed them as such.

Q I see. When did you first find out that they were for Handy Andy?

A I don't remember exactly when.

Q I see. In other words, what you want us to believe is that you went down to make a settlement, you took your accountant with you, you asked no questions, you signed the notes on the representation that they would be bought back for a nominal amount and no interest would be charged; right?

A Yes, sir.

Q Now, did he tell you what that nominal charge was going to be?

A No, sir.

Q You didn't ask him how much the discount was going to be?

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A No, sir.

Q I see. As I recall, you said that Mr. Faberman told you the reason he wanted the notes was because it had something to do with their going public?

A No. That they were a public corporation.

Q I see. Do you know when they went public?

A Gee, I don't remember the date, no.

Q Do you remember the year?

A 1968. I don't remember. I don't remember. Concerning the notes, I recall Mr. Faberman mentioned he needed it in order -- his balance sheet didn't look good, or something, and he needed the notes. That was another reason he gave me for asking me to sign them. Would I please do it for the balance sheet, or something.

Q Their balance sheet was so bad that they had to move \$2,500 from accounts receivable into notes?

A He didn't say that.

Q He didn't say that? Did you buy any stock in Olsten when it went public?

A Yes.

Q Do you still hold it?

A I have five shares left.

Q I see. Did you sell your stock before or after November 1, 1971?

A Before.

Q How long before?

A I don't recall the dates. I could get the dates, if it were necessary.

Q But you sure remember very well what Mr. Faberman told you?

A Yes.

Q Did you ever make a request that he buy the notes back at a discount?

A No.

Q What did you do when the first note came due, September 1, 1971?

A Nothing.

Q Nothing. Now, Exhibit 7 for Identification says, on page 2 --

A Where is Exhibit 7?

Q The Answer, page 2.

A Okay.

Q "The defendant received the notes without paying any adequate consideration therefore." What does that mean?

A I wouldn't interpret that.

Q I beg your pardon?

A I can't interpret that.

Q I am not asking you to interpret. I am asking what

it means to you as a layman?

MR. WALKER: Why don't you ask him first if it means anything to him as a layman.

THE WITNESS: I don't understand what it means.

Q (By Mr. Ribicoff) You don't understand what it means?

A No, sir.

Q Did you see that Answer before it was filed?

A No. I don't know when it was filed.

Q What is a national account, Mr. Zessos?

MR. WALKER: I will object to the form of that, because it is a general question.

MR. RIBICOFF: I'll withdraw it. Life is too short. Let me try it again.

Q (By Mr. Ribicoff) Do you know what the term "national account" means in your business?

A Yes.

Q All right. What does it mean?

A I would say it means an account -- are we talking in terms of context of Olsten's, what a national account means?

Q Yes.

A All right. It means an account that Olsten has made a special arrangement with, whereby we will do business

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with this customer throughout the country on a pre-set price basis; an exclusive account of Olsten's; an agreement had been made nationally by Olsten.

Q Did you, during the course of your operations as an Olsten franchisee, service any national accounts?

A I would have to check that, Mr. Ribicoff.

Q Do you remember any national accounts you might have serviced?

A I think there was one account that Olsten gave us the name to do business with them nationally.

Q What was the name of it? What was it?

A I don't remember.

Q Do you think you could check that before we get together again tomorrow?

A Yes, sir.

Q All right. During the course of your operations as an Olsten franchisee, did you ever supply temporary personnel to any customer who had a home office located outside of Connecticut?

MR. WALKER: To his knowledge.

THE WITNESS: Any customer that had a home office outside of Connecticut?

MR. RIBICOFF: I assume if he has no knowledge, he will come back with his standard answer. I'm not worried.

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about that. He knows how to answer a question. He is an expert.

THE WITNESS: Yes. I'd say yes.

Q (By Mr. Ribicoff) Who?

A Monsanto is one. I don't believe their home office I guess Combustion Engineering. I guess their home office is in either New York or Windsor, Connecticut. I don't know what they consider their home office to be.

Q Any others?

A I would have to bring a list of accounts and just review them. I don't know if I know where their home offices are.

Q Will you do that before tomorrow?

A Yes.

MR. WALKER: Well, may I ask the purpose? It sounds like an exercise, like you are asking him to do some work. It seems to me it has very little to do with any of the issues between the parties, as far as who the customers are.

It is my understanding that your client has got the billing records. Now, as far as where the home offices of these people are, or these different corporations are, it seems to be irrelevant. It seems to be an unnecessary use of -- I don't think the material is at hand. I just don't think it is



an appropriate place to look for that sort of thing.

MR. RIBICOFF: I am not accustomed to asking questions that have no relevance to the purpose of the examination. But I can assure you that any questions I ask are, indeed, relevant, whether you consider them so or not.

MR. WALKER: But oftentimes, you do, you see, even though it may not be your purpose.

MR. RIBICOFF: No, I don't. I know exactly why I am asking the questions. The witness knows why I am asking the questions. That's why he can't recall a great many things that he has been expert at recalling in his previous testimony, and I don't anticipate that a witness, knowing for as long a period of time as this witness has known, that he was going to be examined on deposition, is entitled to take the position that he hasn't looked at anything and is not prepared, and I think he should understand that the purpose of a deposition, in relation to a trial, is such that I personally, and I think the court, will consider this lack of knowledge as being very significant if his memory is suddenly refreshed by trial time, and I think the time for him to refresh his memory is now, not at the trial. And I just want to warn him that so far as I am concerned, I do not expect the refreshment of memory hereafter to be of any great significance.

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MR. WALKER: Mr. Ribicoff, for the record, you have been making threats of what the court is going to do and what you consider since this litigation commenced, and you have been telling my client and myself, giving advice, and I really don't think we have solicited any, and I would ask that it be refrained from. As far as trying to suggest that anything improper has been done, already done, I think that is completely out of line.

MR. RIBICOFF: I am not giving you advice. I am just replying to the fact that I am inquiring into fields that are relevant, whether you believe them to be relevant or not, and I do not expect witnesses to show up completely unprepared for examination. I make no threats. I simply indicate to you that this is something that he does at his hazard, so we understand each other.

THE WITNESS: May I say something to Mr. Walker off the record?

MR. RIBICOFF: No.

MR. WALKER: No.

THE WITNESS: Fine. Okay.

MR. RIBICOFF: Talk to Mr. Walker at the end of the session.

THE WITNESS: Thank you very much, Mr. Ribicoff.

MR. RIBICOFF: Whether it is on the record or

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off the record is of no particular concern, and I don't want to know anything about any communications you have with him.

THE WITNESS: Thank you, thank you.

Q (By Mr. Ribicoff) To your knowledge, did you ever service the Maryland Fidelity and Guarantee Company as an Olsten franchisee?

A Yes. I believe the Maryland Casualty, if it's one and the same.

Q Maryland Casualty?

A Yes.

Q Is that a national account?

A I don't believe so.

Q Did you ever service Control Data Corporation as an Olsten franchisee?

A I have to check that one.

Q Have you, in the course of your career as an Olsten franchisee, ever serviced the Heublein Company?

A Yes.

Q Do you recall how you obtained the Heublein account?

A Yes.

Q How?

A Through personal sales calls.

Q I see. Did you have any leads from anybody with regard to the making of these personal sales calls?

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A Could you explain "leads"?

Q Did anybody, connected with the Olston organization, give you any leads as to who to contact at any particular time in order to service Heublein?

A No, sir.

Q You're sure of that?

A As much as I can recall.

Q Who did you contact at Heublein?

A A Mr. Jim Ahearn. Jim Ahearn, I believe was his name.

Q How many times did you see him before you got the account?

A Oh, I don't remember.

Q Did you get the account rather promptly, or did it take you a long time?

A I would have to check the sales records. I can't remember back to 1965. I made a lot of sales calls, and I don't remember how long it took me.

Q You got him in 1965?

A Or 1966, excuse me.

Q I'm sorry. If I had known it was that long, I might not have asked the question.

A 1966, '67 maybe.

Q Now it is up to 1967. How many more years do you want

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to add?

A Olsten has all the records.

MR. WALKER: Just a minute. Answer Mr. Ribicoff's questions. If I think they are improper, I will say so. Please listen to it and answer the question.

THE WITNESS: Yes, sir.

Q (By Mr. Ribicoff) In September of 1965, did you know how many Handy Andy branches or licensees Olsten had?

A No.

Q Did you ask, at any time before you signed your contract with Olsten?

A I can't remember. I don't recall exactly any discussions of how many offices Handy Andy had. I didn't know.

Q What was the nature of any discussions you had before you signed the contract in September, 1965, with regard to Handy Andy?

A It was another area that Olsten was going into, and it was part of my franchise agreement that we were going to open a Handy Andy office.

Q I see. Did you make any inquiries, prior to the time you signed the contract, as to what the start-up cost would be to open a Handy Andy office?

A No.

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Q Did anybody tell you that you had to open a Handy Andy office?

A Bill Olsten did when I had my contract amended.

Q When you had the contract amended? Which amendment?

A The first amendment.

Q 1969?

A 1969.

Q I see. Prior to that time, nobody told you you had to open a Handy Andy franchise?

A It was in the franchise agreement.

Q Well, let's take a look at Exhibit 1 for identification. Now, take a look at page 2. It says that blue collar personnel shall be supplied by divisional licensee, designated as Handy Andy Labor, commencing six months from the date hereof; is that right?

A Yes, sir.

Q Did Olsten tell you what would happen if you didn't open a Handy Andy franchise?

A No.

Q Did you ever ask?

A No.

Q In fact, you did not open a Handy Andy Labor franchise within six months from the contract?

A No.



Q Indeed, you made no effort to do so until such time as you were negotiating the amendment to the contract that was signed late in 1969; isn't that correct?

A I was told I had to open when the contract was amended.

Q When the contract was amended? You mean in 1969?

A Yes, sir.

Q That's the first time you were told that you had to open a Handy Andy franchise?

A He wanted me open, yes, sir.

Q I beg your pardon?

A Mr. Olsten wanted me to open, told me I had to open, it was in my contract.

Q It was in your contract?

A That's right.

Q Did he make any comment or make any statement as to what would happen if you didn't open it?

A No.

Q When you refer to the amendment to your contract in 1969, is this document what you are referring to?

A This is it, yes. The first amendment, yes, sir.

MR. RIBICOFF: May we have that marked, the amendment to the agreement between the parties, dated the blank day of August, 1969, as far as I can tell.

(The above-mentioned document was received and marked Defendant's Exhibit 8 for Identification.)

Q (By Mr. Ribicoff) With regard to Exhibit 8 for Identification, Mr. Zessos; that was paragraph 2 that said you were to open Handy Andy offices in Hartford and New Haven, or rather that the time to open Handy Andy offices in Hartford and New Haven is extended to December 31, 1969; isn't that right?

A Yes, sir.

Q You never did open a Handy Andy office in Hartford; did you?

A No, sir.

Q Did anyone at Olsten urge you to do so?

A No, sir.

Q Did anybody at Olsten tell you what the consequence would be if you failed to open a Handy Andy office in Hartford or New Haven by December 31, 1969?

A No.

Q Now, did you, at any time prior to the time you signed the agreement, which is Exhibit 8 for Identification, ever discuss the terms of your contract, Exhibit 1 for Identification, concerning Handy Andy with counsel, your counsel?

A No, sir.

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Q I beg your pardon?

A No, sir.

Q I see.

A In other words, this date, '69?

Q Let's go back.

A I didn't understand your question.

Q I'm sorry. All right. Exhibit 1 for Identification is the original contract?

A Yes, sir.

Q Paragraph 2 deals with the Handy Andy Labor franchise?

A Yes, sir.

Q Did you ever discuss the provisions of paragraph 2, concerning Handy Andy, with your counsel?

A Up to what date?

Q At any time up to September, 1969?

A No, sir.

Q Did you discuss paragraph 2 of your agreement, Exhibit 1 for Identification, concerning Handy Andy Labor, with any lawyer prior to September, 1969?

A No, sir.

MR. WALKER: Well, wait a minute. With any lawyer? You mean whether representing himself or representing anybody else?

Q (By Mr. Ribicoff) With any lawyer other

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than a lawyer hired by Olsten?

A Not Handy Andy specifically. The contract was reviewed by a lawyer when I first took out the agreement.

Q You mean back in 1965?

A Yes.

Q Who was your lawyer then?

A I did not have a lawyer per se. I had a friend of mine look at it, and he had his lawyer check it.

Q Who was that? Who was the lawyer?

A I don't know the gentleman's name.

Q I see. Who was the friend?

A He was a Controller of Lincoln Center at the time.

Q Was it a lawyer in New York?

A Yes.

Q I see. This was before you signed the first contract?

A Yes.

Q That's Exhibit 1 for Identification?

A Right.

Q But after that time, you did not discuss the terms of the contract, Exhibit 1 for Identification, with any other lawyer?

A No, sir.

MR. WALKER: Up to, I take it --

Q (By Mr. Ribicoff) Up to September, 1969?

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A Right.

Q Mr. Zessos, did you, at any time, have any verbal understanding with anybody at Olsten that you did not have to open a Handy Andy Labor franchise?

A No, sir.

Q When, Mr. Zessos, was the first time that you consulted an attorney about your franchise agreement with Olsten, and the possibility of terminating it?

A It was either June or July of 1971.

Q Who was your counsel with whom you discussed it?

A With Day, Berry and Walker. Day, Berry --

MR. WALKER: Thank you.

THE WITNESS: See, that's a Freudian slip. That's going to happen soon, Phil, because of the capital job you are doing.

Q (By Mr. Ribicoff) When was it that you reached a decision that you were going to terminate your contract?

A After I had discussions with my attorneys.

Q Do you remember the date when you decided that you were going to terminate?

A No, not the exact date.

Q Approximately June, July?

A I imagine, I would approximate July.

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Q Approximately July?

A I would think July, 1971.

Q When you reached that decision that you were going to terminate, did you communicate that information to anybody at Olsten's?

A Olsten?

Q At Olsten's, anybody connected with the Olsten Corporation?

A In Westbury, Long Island?

Q Yes.

A No, sir.

Q Now, when you reached your decision that you were going to terminate, did you also reach a decision as to the date as of which you were going to terminate?

A After discussion with counsel, we decided on --

Q You decided on the date of November 1, 1971?

A Of not renewing the agreement.

Q Of not renewing the agreement?

A Yes, the franchise agreement.

Q I see. The franchise agreement ran out when?

A Well, let's see. Five years would be -- I can't find it.

Q You can't find it? Just a moment. Let me take a look at it. Let me call your attention to paragraph 23 on

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page 14 of Exhibit A. "This agreement is for a term of five years and six weeks." Now, when would five years and six weeks end after September 17, 1965?

A I think that would have been November 1, 1970, I believe.

Q 1970. All right. So that presumably, the contract had expired, under your theory, before November 1, 1971; isn't that right?

A I don't know when it expired.

Q Well, what made you think that you reached a decision because November 1, 1971 was the date of renewal?

A Would you repeat that?

(The last question was read by the reporter.)

MR. RIBICOFF: I'm sorry. That's a bad question.

Q (By Mr. Ribicoff) I believe you previously said that you picked the date of November 1, 1971, because that was the date for renewal of the agreement; didn't you?

A No, sir. I didn't say that.

Q Oh, I see. Or did you say that you picked that because that was the date when the contract terminated?

A No, sir. I didn't say that.

Q Well then, why did you pick November 1, 1971 as the date of termination?

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A It was for, as it said, a term of five years and six weeks, which was November 1, 1970.

Q Right.

A And we negotiated for a year, couldn't come to terms, and the end of November 1, 1971, we didn't renew my agreement.

Q I see. All right. I think you said that you reached this decision in July of 1971, approximately, that you were going to terminate as of November 1, 1971?

A Of that date?

Q Yes.

A Yes, approximately.

Q Approximately July, you decided you were going to terminate around November 1, 1971?

A Well, we had not come to an agreement.

MR. WALKER: Well, the answer calls for a yes or no, Mr. Zessos.

THE WITNESS: Yes.

MR. WALKER: All right.

Q (By Mr. Ribicoff) Now, certainly by the first of October, 1971, you knew that you were going to terminate the contract by the end of that month?

MR. WALKER: Well, objection.

THE WITNESS: Terminate --

MR. WALKER: The testimony is that November 1, 1971 was the date on which he was going to stop being a Olsten franchisee. I think the testimony is also that it was a year before, November 1, 1970, that the license agreement expired. He was working without an agreement.

Q (By Mr. Ribicoff) Is that your understanding, Mr. Zessos?

A Yes, sir.

Q All right. Now, by October 1, 1971, you knew, did you not, that as of November 1, 1971, you were going to end your relationship with Olsten; is that right?

A Yes, sir.

Q Now, when Mr. Helweil was in Hartford in October of 1971 with regard to a sales tax hearing, did you tell him that you intended to terminate, that you intended to end your relationship with Olsten at the end of the month?

A No, sir.

Q When Mr. Ledwith was in Hartford the last week of October to give you some instruction on how to enter the transcribing aspect of the business, did you tell him that you intended to end your association with Olsten at the end of October, 1971?

A Mr. Ledwith?

Q Mr. Ledwith?

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A I don't remember Mr. Ledwith.

Q You don't remember Mr. Ledwith?

MR. MILLER: Richard.

Q (By Mr. Ribicoff) Do you remember anybody coming to Hartford during October, 1971, to discuss with you how to enter the transcribing aspect of the temporary personnel business?

A No, I don't, at this point. I have to check it.

Q You don't? You have to check?

A Yes.

Q But you don't remember?

A No, sir.

Q Do you remember, Mr. Zessos, a seminar at Western Electric during October, 1971?

A No, sir.

Q Do you remember any seminars in Connecticut during 1971, that Mr. Olsten attended at your request?

A The Southern New England Telephone Company.

Q I see. When was that?

A It was -- I invited Mr. Olsten up -- I don't remember the exact date -- sometime in 1971, to participate in a meeting of the people from the Southern New England -- from the Bell System, of the people from the employment and the different areas of the telephone company.

Q I see. This was after you had already decided that you were going to end your relationship with Olsten on November 1, 1971; wasn't it?

A I think it may have been before. I don't remember the exact date.

Q All right. Now, prior to the time that you ended your relationship with Olsten at the end of October, 1971, did you discuss, with any other Olsten franchisee, the matter of terminating, of ending your association with Olsten?

A Yes.

Q Who?

A Mr. Bob Goodfriend.

Q When did you talk to Bob Goodfriend?

A I believe around approximately July of 1971, July or August of 1971, approximately.

Q How many conversations did you have with Mr. Goodfriend?

A I would say several telephone conversations.

Q What was the subject of those conversations?

A I know Bob had been in touch with a lawyer, and he expressed his dissatisfaction with the Olsten organization.

Q When you say he expressed his dissatisfaction with the Olsten organization, what did he say, to the best of your knowledge?

A Basically that they have never really done anything for him.

Q What was he going to do? Was he going to end his relationship?

A He had been talking to attorneys at the time, so he told me.

Q I see. At that time, had you already decided that you were going to end your relationship with Olsten?

A I don't remember in what sequence it happened.

Q I see. Did you tell him that you were also thinking of ending your relationship with Olsten?

A I don't remember the sequence, but I did tell him I was going to see a lawyer, or I had already seen one. I don't remember.

Q All right. Over what period of time did you carry on these conversations with Mr. Goodfriend once you started them in July of 1971?

A We talked up until the time that I did not renew my agreement.

Q I see. Was there any particular time when you told him that you had made up your mind and you were, indeed, going to terminate?

A I don't remember the exact date. Bob was aware that I was not renewing my agreement at some point.

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Q All right. Who made the first call, you or Good-friend? Did you call him, or did he call you first?

A I don't recall. We had been speaking, over the years, I have spoken to him. I don't remember.

Q Now, any other Olsten franchisees with whom you talked, prior to October 31, 1971, about ending your relationship?

A No, sir.

Q None of them?

A None.

Q None? Now, after you had finally reached a decision that you would end your relationship with Olsten, as I understand it, you did not talk to anybody at Olsten about this before October 31, 1971?

A Yes.

Q Do you remember why it is that you didn't talk to anybody at Olsten to tell them that you were doing this?

A Well, I didn't trust them.

Q What do you mean, you didn't trust them?

A Well, I didn't see any reason for me to tell them that I was not renewing my agreement. We had been negotiating for a year, couldn't come to terms. I didn't think it was necessary for me to advise them.

Q I see. What was it you didn't trust about them?

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A I was very apprehensive. If I told them, I would be afraid of the consequence of what they would try to do if I did try to tell them.

Q What does that mean? Afraid they would sue you?

A I was afraid that they would come in and try to get an injunction against me. I was afraid that they would come in and try to do -- I don't know. I just was afraid to openly tell them of the date.

Q I see. As a matter of fact, you were aware, were you not, that under your contract, once you terminated, there was a so-called restrictive covenant that you weren't to go into business within a certain range of the area where you were in business at that time; isn't that right?

MR. WALKER: I will object, unless -- I have no objection if the question refers to did he know that there was such and such a paragraph in his Complaint, but --

MR. RIBICOFF: For the moment, I would like it answered the way I asked it.

THE WITNESS: Can you ask it again?

MR. WALKER: I object. I am obliged to object to the form.

MR. RIBICOFF: You have objected to the form. Now I want an answer. I will take my chances on the form.

THE WITNESS: Repeat the question?

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(The last question was read by the reporter.)

MR. WALKER: I made my objection to it.

Q (By Mr. Ribicoff) Answer?

A I was aware there was a restrictive covenant.

Q And that the restrictive covenant provision provided that they could seek an injunction against you?

A I --

Q You don't remember that?

A It isn't that I don't remember. I didn't know the legality of the restrictive covenant. I knew there was a restrictive covenant clause. I have no knowledge of the legality of it.

Q All right. Let me call your attention, in Exhibit 1, to paragraph 26 on page 14, the last sentence. "In any instance, the licensee consents to injunctive relief without restricting the licensor from demanding damages or any further and different relief as may be available."

A Where is that?

Q The last sentence of paragraph 26, page 14.

A Okay. Excuse me.

MR. WALKER: Right after where it says, "Should the court deem any portion of it reasonable."

THE WITNESS: I see it.

Q (By Mr. Ribicoff) All right. You knew

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the clause was there?

A I, at this point, was taking the advice of my counsel. It was up to my counsel to advise me, and I went along with what they said.

MR. WALKER: That isn't the answer. The question is did you know the clause was in there. You can answer that yes or no.

THE WITNESS: I knew there was a restrictive covenant paragraph in there. I don't understand the legality of it or the legal language of it.

Q (By Mr. Ribicoff) That's all right. There is no limit to how many times I have prepared to try that. So in other words, you were afraid of an injunction; is that right?

A Yes.

Q Nonetheless, you did end your relationship on November 1, as of November 1, 1971; is that right?

A Yes, sir.

Q In ending it, were you still afraid there was going to be an injunction?

A No.

Q Why not?

A Two reasons. One, there was that year of negotiations from 1970 to '71 when we couldn't come to terms, and secondly,

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as I understand it, the restrictive covenant is non-enforceable, or it is too restrictive, my counsel advised me.

Q Did it become non-enforceable on November 1, or is that the first time it became non-enforceable, as far as you are concerned?

MR. WALKER: I will object. You are asking him to practice law. I object to the form of that question. I don't think he has to answer that.

MR. RIBICOFF: It's a bad question, frankly.

THE WITNESS: Okay.

MR. WALKER: I didn't want to say that.

Q (By Mr. Ribicoff) At any rate, sometime between July and November 1, you overcame your fears of an injunction?

A I don't think it was a matter of fear. I think it was a matter of taking the advice of my counsel.

Q Okay. Now, tell me about these negotiations that started in 1970, and came to naught. What was the first step in the negotiations in 1970, with regard to renewal; do you recall?

A As well as I can remember, without seeing the actual documents, I received a letter, under Mr. Bergheiser's signature, to the effect that my renewal was coming up, and he sent me a form that I should sign and send back to Olsten.

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Q I see. Did you sign the form?

A Yes.

Q I see. You signed the form, but that was not a renewal, as far as you were concerned?

A I thought I had renewed it.

Q You thought you had renewed it?

A Yes.

Q Okay. When, after you got that Bergheiser letter and signed it, did you decide that you hadn't renewed?

A It was unacceptable to Mr. Olsten.

Q It was unacceptable to Mr. Olsten? How did you learn that?

A He called me on the phone.

Q I see. Why was it unacceptable?

A Because I signed on the bottom of it, "Renewable at a five per cent franchise fee rate."

Q I see. Mr. Olsten said that was unacceptable to him?

A Yes.

Q Then what happened?

A He said we had a problem. I agreed, and we set up a meeting to go to New York and discuss it.

Q Did you have such a meeting?

A Yes.

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Q What happened at that meeting?

A As a result of that meeting or others and telephone conversations, another amendment, or whatever it's called, a sheet of paper was sent to me, and I'm sure you have a copy of it, that established a franchise rate at six per cent, and one-half of one per cent, a half per cent of the franchise fee that I paid in would be sent back to me to be used for advertising. That was the second proposal I got from the Clston people.

Q Now, Mr. Zestos, this meeting that you had in New York after the Berghelmer letter, when was that, approximately?

A That must have been in August of 1969, I imagine, July or August of 1969.

Q I thought you said these negotiations started in 1970?

A 1970, I mean. Whenever it was. I'm sorry. 1970. Excuse me.

Q All right. So you had a discussion in 1970, and you had telephone calls and further discussions, and as a result of that, sometime in September, you got another letter or proposal?

A Proposal, whichever.

Q What did you do with that?

A Signed it.

Q You signed it?

A Yes, sir.

Q As agreed?

A Yes, sir.

Q Okay. At that time, did you think you had renewed your contract?

A I thought so.

Q Well, when did you decide that you hadn't renewed your contract after that?

A Well, apparently, that wasn't acceptable either, because --

Q It wasn't acceptable to whom?

A Apparently, it wasn't acceptable to Mr. Olsten.

Q Just a minute. Who sent you this?

A Mr. Olsten sent me the second one.

Q He sent you that letter in September of 1970?

A Yes, sir.

Q And you signed it. Did you put any conditions on it?

A No, sir.

Q I see. You sent it back to him?

A Yes, sir.

Q What did he do, call you and tell you it was unacceptable?

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A No.

Q What happened?

A In January, I believe, of 1971, I got another letter saying that the franchise fee now is going to stay at five per cent for two years, and it had another provision there, which I don't remember, and I'm sure we have copies of it.

Q What happened to that letter? Did that call for a signature on your part?

A No, sir.

Q I see. Were you satisfied with that?

A At the time.

Q At the time, you were satisfied?

A I don't know. I mean, I just looked at it, and I had no feeling either way. I just said, "Well, fine."

Q Did you tell Olsten or anybody that that was fine, you liked that?

A No.

Q You didn't?

A No.

Q So at that time, did you think you had a contract or didn't have a contract?

A At that point, I didn't know.

Q You didn't know? I see. In other words, what they had said was instead of being six per cent, it was now going

to be five per cent?

A Six per cent and a half per cent back. It was now --

Q Five per cent straight?

A Five per cent for two years.

Q That was better than six per cent with a half per cent back; wasn't it?

A On the surface, it appeared to be. However, Mr. Olsten, in the letter of September, 1970, also said to me that he would use me as a consultant and pay me additional monies if I signed this agreement in September of 1970.

Q That was in the letter?

A That was not in the letter.

Q That was not in the letter?

A No.

Q When did he tell you that?

A When we, apparently, came to terms in September, 1970.

Q That was after you sent back the letter?

A No, no. Before.

Q Before?

A Before. While we had these discussions, Mr. Olsten said he could not give me a better than six per cent contract, but he would send me a half per cent back, and would also use me as a consultant, and give me extra monies to help make it

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up.

Q Didn't you ask him to give you that in writing?

A Yes, I did.

Q What did he say?

A He said he couldn't.

Q Why? Did he tell you why?

A I believe he mentioned that his future negotiations with franchisees, he would have to charge me six per cent, because the franchisees future rate would depend on the rate he charged me. So he made this special deal, supposedly, with me.

Q When did he make that deal? Before the September, 1970 letter?

A Before.

Q I see. You never got it in writing?

A No, sir.

Q When you got the letter saying the franchise fee was going to be reduced to five per cent, did you ask him whether your consultant fees would continue?

A No, sir. I don't recall if I did or not.

Q You don't recall if you did or not?

A I don't recall.

Q What was the agreement as to the consultant fee, what rate?

A We didn't discuss any specific rate. I tried to get a specific rate, and Mr. Olsten would not agree to a specific rate.

Q Did he tell you how many hours he was going to use you for?

A No. He said as needed.

Q As needed? In other words, he said he was going to use you as needed, and wouldn't name the rate?

A As a consultant, and pay me.

Q He wouldn't tell you how much?

A He said, "We'll decide on the rate."

Q I see. Well, at the time you got that later letter, which was when, incidently, about the five per cent fee?

A That, I believe, came in early January of 1971.

Q All right. When you got that letter, whenever it was, let's say January of 1971, did you ask Mr. Olsten whether this was going to be better for you than taking the September, 1970 letter, plus consultant fees?

A No. Not when I received the letter, I did not.

Q I see. But you weren't happy with that letter? At least you didn't do anything about the letter?

A At that point, no.

Q You didn't say yes or no?

A Didn't say anything.

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Q I see. Were there any later communications?

A Correspondence or oral?

Q Either?

A I had a meeting. I was invited down to have lunch with Mr. Olsten and Mr. Faberman in late February or early March of 1971, and at that time, we discussed the renewal again.

Q What came out of that discussion?

A It was that I would get a flat five per cent franchise fee rate for the remainder of my agreement.

Q Was that satisfactory to you?

A Yes.

Q It was?

A At that time.

Q When did you decide it wasn't satisfactory?

A When I got Mr. Olsten's new proposal that they would charge me a five per cent franchise fee rate for the rest of my life, and that was not agreeable to me.

Q That was not agreeable to you?

A No, sir.

Q When did they give you that franchise fee rate of five per cent for the rest of your life?

A That was, I believe, in a letter, a proposal, dated April, 1971.

Q I see. That was not part of your discussion with them, your discussion that you had about the five per cent for the life of the agreement? Was that part of that discussion?

A It was for the -- I thought, and I think Alec and I agreed that it would be five per cent for the life of my agreement.

Q Then you didn't sign the agreement?

A I did not.

Q Were there any other discussions?

A I got a call from Mr. Faberman, I believe, in September of 1971, that they were going to send me another proposal, that I don't remember the exact figures, that they would charge me five per cent up to, I believe, \$500,000 billing, and then four per cent under \$500,000 billing.

Q I see. That wasn't satisfactory to you, either?

A I didn't sign that either.

Q You didn't sign that? By that time, you had already decided you were going to end your relationship with Olsten, anyway; isn't that right?

A Yes. I was advised that, yes.

Q But you didn't tell Olsten that there was no point in signing it, because you were through, anyway; is that right?

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A I just didn't sign it.

Q You just didn't sign it?

A I didn't sign it.

Q When Olsten called you in September or October, whatever it was, in 1971, you didn't tell him then that you were --

A Mr. Faberman.

Q You didn't tell Mr. Faberman that you were going away?

A The purpose -- no.

Q You didn't tell him that you were through with Olsten?

MR. WALKER: Yes or no?

A No. Sorry.

Q What did you tell him?

A Nothing.

Q Did you tell him that you liked or didn't like the agreement?

A He didn't ask me whether I liked it or disliked it.

Q He said, "This is what we are going to do," and that's it?

A Right.

Q That was the end of the conversation?

A That's it.

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Q You didn't even say, "Don't bother to send the letter"?

A Didn't say anything.

Q You didn't say, "I like it," or, "I don't like it"?

A Didn't say anything.

Q Now, Mr. Zessos, after you set your rate schedule in 1965, did you have any occasion to change your rate schedule thereafter?

A Yes.

Q When was the first time you changed it?

A This is an educated guess. I would say approximately a year, year and a half.

Q I see. Did you change it on your own?

A Yes.

Q Did you ask for Olsten approval?

A No.

Q Did you change your rate schedule thereafter?

A Yes.

Q On your own?

A Yes.

Q Did you ask for Olsten approval?

A No.

Q Have you made further changes since that time?

A I imagine I up-dated the rate schedule three or four

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times since 1965.

Q Did you ever ask Olsten's permission?

A Not since the first time.

Q Not since the original setting?

A Not since the original rate schedule.

Q Did you ever communicate to him what your changes were? As you made each change, did you notify Olsten of the change?

A No.

Q Did they ever find out what your rates were?

A They did my billing. They knew what my rates were.

Q I see. In other words, you made the change, and your billing would show that your rate had changed?

A Yes.

Q Okay. Did Olsten, at any time -- by Olsten, I mean the Olsten Corporation or anybody connected with it -- at any time during the course of this agreement, ever tell you what rates to charge?

A On this one national account that I will try to get the name of, they told me I had to charge a certain rate.

Q I see. But other than that, they never told you what rate to charge?

A Only at the beginning.

Q Only at the beginning when you discussed it with Mr.

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A Riedinger.

Q -- Riedinger? And on the national account, they had you charge a rate? Was that above or below your then rate in effect for your customers, generally?

A It was below.

Q It was below? Did you accept the account?

A No.

Q I see. Did they tell you you had the option not to accept the account?

A They were very upset that I didn't accept the account, but I couldn't get a person to work for that low rate that I would have to pay them.

Q So in other words, you simply told them that you couldn't do it for that. Did you tell them you couldn't do it for that money?

A I told them I couldn't do it for that money.

Q They were upset? Did they say you had to do it?

A They said if I was going to do it, I had to do it at that rate.

Q In other words, they gave you the choice of either doing it at that rate or turning it down?

A The choice was whether or not I could get a temporary to work.

Q Let's answer my questions, Mr. Zessos.

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A Excuse me.

MR. RIBICOFF: Let's have it reread.

(The following question was read by the reporter: "In other words, they gave you the choice of either doing it at that rate or turning it down?")

THE WITNESS: Sorry. They didn't give me a choice. I just couldn't do it.

Q (By Mr. Ribicoff) You turned it down?

A Turned it down.

Q Now, when you talked about the rate, you were talking about the billing rate; is that right?

A The one rate that they told me to charge was low.

Q That was the rate at which you were to bill the customer; is that right?

A Yes, sir.

Q When you looked at the billing rate, you made the determination that in order to make your profit and pay somebody, you would have to pay the temporary so low a rate that you couldn't hire anybody; is that what it amounted to?

A Basically, couldn't fill the order.

Q Certainly. Did they ever, at any time, ever discuss with you the rates that you paid your temporary personnel?

A At the beginning, yes, when I first went into business.

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Q When you first went into business?

A Yes.

Q The rate that Mr. Riedinger set up with you, was that the rate that you would pay your temporary, or the rate you would charge your customers?

A Both.

Q That's what determined the mark-up?

A Yes, sir.

Q When you made the changes thereafter in your rate, did you maintain the same mark-up?

A Yes, sir.

Q In other words, as pay rates in the area went up for temporary personnel, you added your mark-up and changed your billing rate?

A Yes, sir.

Q You never asked Olsten for permission?

A No, sir.

Q They never told you you had to charge those rates?

A No, sir.

Q And on the one occasion when they offered you a customer where they fixed the billing rate, you simply said, "I can't do it," and you turned it down; right?

A I didn't fill the order.

Q You didn't fill the order?

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A I couldn't.

Q You told Olsten you weren't going to fill the order; weren't you?

A I couldn't. Oh, sure. I couldn't do it.

Q Incidentally, whatever that so-called national account was, did you ever do any business with them thereafter?

A No, sir.

Q Okay. All right. I think that's enough for today.

(Whereupon the deposition was recessed at 5:00 o'clock p.m.)

CONSTANTINE T. ZEBOS

STATE OF CONNECTICUT )  
COUNTY OF HARTFORD )

Subscribed and sworn to before me this       day of  
1973.

NOTARY PUBLIC

My commission expires  
April

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## DEFENDANT'S EXHIBITS FOR IDENTIFICATION

DESCRIPTION	NO.	PAGE
Agreement between Olsten's U.S.A., Inc. and Constantine T. Zessos, dated September 17, 1965	1	26
Complaint dated January 26, 1972	2	63
Certificate of Olsten's of Hartford County, dated October 10, 1971	3	69
Certificate of Olsten's of New Haven County, dated October 20, 1971	4	73
Statement entitled, "Olsten's of New Haven Analysis of Franchise Fees, Expenses and Notes Receivable."	5	81
Counter-Claim dated September 11, 1972	6	90
Answer dated December 5, 1972	7	90
Amendment to Agreement between the parties, dated August, 1969	8	108

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UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

CAPITAL TEMPORARIES, INC.,  
OF HARTFORD, et al.,

Plaintiffs,

vs.

THE CLSTEN CORPORATION,

Defendant.

 $\times$ 

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: Case No. 14749

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**X**

Continued deposition of CONSTANTINE T. ZESSOS,  
taken pursuant to the Federal Rules of Civil Procedure,  
at the law offices of Ribicoff and Kotkin, 799 Main  
Street, Hartford, Connecticut, before Lawrence Wolin,  
a Notary Public in and for the State of Connecticut, on  
Wednesday, December 27, 1972, at 2:15 P.M.

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P r e s e n t:

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MAX BERGHEISER

ooo



DEPOSITION  
OF  
CONSTANTINE ZESSOS

(Continued)

December 27, 1972, at 2:15 P.M.

DIRECT EXAMINATION BY MR. RIBICOFF (Cont'd):

Q Mr. Zessos, one of the things that you were going to do yesterday, or rather, between yesterday's session and today is to check with regard to what you said was the one national account that came to you from Olsten which you ultimately didn't think the price was too well. What was the name of that account?

A We don't remember. I checked with my two people in the office. We did not do business with them and have no record of the name of the account.

Q Do you know what in the Olsten organization a national account roster is?

A It is a list of accounts, I believe, that was circulated by the Olsten home office.

Q As to whom? Is it the franchisee?

A Yes.

Q What did it show?

A A list of accounts.

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Q What did it tell you about the accounts?

A As far as I can remember, just the name of the account.

Q Nothing else?

A I would have to see the sheet to recall.

Q Well, I know you would have to see the sheet. Mr. Zasnos, how often would these national account rosters get circulated, how often?

A I just remember seeing one.

Q All the years that you were with Olsten you saw one?

A One national account listed.

Q Did you ever hear of a document called, Analysis of National Accounts?

A I don't recall the exact title of the document.

Q Well, did the Olsten organization ever send to you from time to time any documents that would show accounts that were being serviced by other Olsten offices which also did business in your area?

A I got a list of accounts that other Olsten offices had serviced in other cities that could have offices in my area.

Q You did get such lists?

A Yes.

Q And that list showed, not only the name of the account, but which offices of Olsten were handling the account.

A I believe it did, what city had done business with

them.

Q How often did these come out?

A I don't recall.

Q Weekly?

A No.

Q Monthly?

A I don't recall with what frequency.

Q How many of them do you think you got when you were an Olsten franchisee?

A I couldn't say. I would have to check it.

Q How would you check it? How would you go about checking it?

A I would go back to see if we have any of these forms in the office.

Q Would you save them, do you think?

A I don't know.

Q Well, you ran this business, didn't you?

A Yes, I did.

Q And sales were your primary responsibility, weren't they?

A Yes.

Q Did you ever use these lists as a pool or a means for getting business for any of these companies in Hartford?

A When I first started in business in '65, I don't recall getting this list, and when I first started in business

THE WITNESS: Read it back again.

Q Let me try again. What proportion of your customers at this time are customers that you have had since at least 1965?

A 65 per cent which is a wild guess.

Q 65 per cent in number or volume of business?

A In volume, I would say.

Q During the course of your operation of this franchise from 1965 on, did you make any effort over the course of the years to keep on adding to your business?

A Yes, sir.

Q And during the course of these six years you were always soliciting new additional business, weren't you?

A When I feel I could fill the order, yes.

Q Well, which came first, the chicken or the egg? What did you do; hire temporary personnel before you looked for business?

A I didn't look for business until I felt that we could properly fill the orders.

Q I had heard what you said. I asked you whether you filled up your roster on temporary personnel.

MR. WALKER: You asked him which came first, the chicken or the egg, and he gave you a responsive answer.

MR. RIDICOFF: If he gave me a responsive answer

then it is another question. I asked him whether he went out and made sure that he had temporary personnel before he solicited new business.

A I scheduled my sales calls, the number of sales calls, that many or that few, so I wouldn't get ahead of myself and not be able to fill the orders properly with the number of temporary personnel available.

Q What did you figure as the response in terms of the customers per sales call? How many sales calls did you have to make in order to get a customer on the average?

A I couldn't answer that question right now because it involves a frequency of calls on one of the accounts as to the number of calls I would have to make.

Q By and large how many calls did you figure you had to make on an account before you actually made the sale, on the average?

A Every account is different and every customer is different. It depends on the individual customer and account as to how many calls to negotiate and finalize the sale.

Q That is why I asked you to give me an average, Mr. Zessos. I know all these things. I don't have to be a salesman to figure out every sales account is different. I asked you for an average and give me an average.

MR. WALKER: I don't think you have to answer that. I think you answered the question, Mr. Zessos.



MR. RIBICOFF: I don't think he has answered the question. Are you going to instruct him not to answer the question?

MR. WALKER: I don't want you to harass him any further.

MR. RIBICOFF: Let me point out in terms of the record, that this man hasn't given a responsive answer yet and I will tell you right now that if he -- I won't say that for the record. I will take care of that later.

This man has avoided every single question and it is difficult for me to get an answer, and when I ask for an answer I don't have to be told that today is Thursday or Wednesday or Tuesday or Friday. Now, I repeat the question.

Tell me on the average from your experience how many sales calls you had to make in order to get a customer over the course of the last six years and I want it answered.

MR. WALKER: Well, I believe he has answered for the record.

MR. RIBICOFF: He has not answered it yet.

MR. WALKER: Well, maybe not to your satisfaction, Mr. Ribicoff, and maybe you seem to know about his business because you seem to know about everybody's

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business.

MR. RUBICOFF: I don't like that insulting remark, Mr. Walker, and I asked a very simple question and if he can't give me an average then he can say, "I can't give you an average," and that is an answer, but to simply tell me that every customer is different indicates that, perhaps, he didn't understand the question and if he didn't understand the question you have instructed him to ask to make it clarified. You know what the word, average, means, Mr. Zanton?

THE WITNESS: Yes.

MR. WALKER: Do you think you can possibly keep a civil tone? We all know you and we are not in front of a judge and jury and you can ask these questions in a conversational view rather than yelling at counsel with the other people in the room or to threaten one thing or another or to make statements like we have been here for a day and a half, and you haven't gotten a responsive answer yet. That is not impressing anybody.

Now, you were given an answer as to why he couldn't give you an average because every customer is different. Now, I don't mind if you want to go ahead on this. I'm not going to make any fuss about it, but I think enough is enough with this histrionics.

BY MR. RIBICOFF:

Q You are satisfied with the answer. I wasn't. Is it possible for you to give me an educated guess as to the average of how many calls per customer were necessary?

A I can't give you an average on the number of calls it takes to secure an order.

Q All right, during the course of each year did you keep adding new customers?

A Yes, sir.

Q And when you go into a customer do you know what his needs are going to be before you make your first contact?

A Not his specific needs.

Q Okay. How do you find that out?

A By making a personal sales call.

Q And during the course of that call you find out what his needs are?

A I try to.

Q And if you find that you don't have on your roster of temporary personnel help the kind of people necessary to fill his needs then you say, good-bye, I will talk to you another time.

A No.

Q What do you do?

A If there is a need we try to go out and recruit people to fill those needs.

Q I see. So in other words, what you do is you get the customers and then you recruit the help in case you don't have it, isn't that true?

A That's not true. That's an overall statement.

Q I'm not so sure I made it as an overall statement. To the extent that you have people on your temporary roster you can service a customer, isn't that right?

A Yes.

Q But if a customer turns out to want something that you don't have on your temporary roster, then you don't turn him down.

A Can you repeat the question, please?

MR. RUDICOFF: Read back the question.

(Reporter reads back the last question as requested)

A We will turn him down for that day for that request, individual request.

Q Until you can find some help?

A Until we have someone available.

Q So that it certainly wasn't your invariable practice not to solicit business until you had help, isn't that correct?

A It is an ever changing thing day by day. Your statement is not correct.

Q Well, before you told us that one of the reasons that you didn't make many sales calls initially was that you didn't

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make the sales call until you had the help, and now you are telling me, of course, you made the sales call, and if you didn't have the help you went out and found it. Which is true or are both true, or is neither of them true?

A Will you repeat that, please?

MR. WALKER: I object to the form of the question. I don't think there is any testimony that he said he didn't make many calls or only a few calls, and it is very difficult to understand the question in that form. It is partially based on -- well, I suppose that this testimony is in the record.

Q Okay, will you answer the question.

A I'm not able to answer the question as it is posed to me. I think what I said is that I did make sales calls at the beginning. The initial sales calls I made at the beginning and correspondingly was advertising for temporary help in the paper, hoping that I would get enough temporary help and hopefully I would get some calls to fill the orders and this was on a day by day basis.

Q What period of time are you talking about now?

A Pardon me?

Q What period of time are you talking about with regard to your last answer?

A I'm talking about the nature of my business.

Q Right up to the present time?

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take the sales call until you had the help, and now you are telling me, of course, you made the sales call, and if you didn't have the help you went out and found it. Which is true or are both true, or is neither of them true?

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Q Right up to the present time?

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A I would say that holds true; yes, sir.

Q But at any rate, you are also continuously seeking new customers, aren't you?

A We seek new customers when we think we can effectively fill their orders.

Q All right, but you don't know what their orders are going to be until you have made the contact and they have agreed to give you business, isn't that so?

A That is not so.

Q Well, what is so.

A What is so, is that we have customers that we presently do business with. Our first priority is servicing those customers. If we feel we have additional temporaries we will go out and solicit business. If we feel we do not have additional temporaries then we will not go out and solicit new business at that time and it is everchanging.

Q How many classifications or types of temporary personnel help do you have?

A For billing purposes I think we have it broken down to approximately twenty-one classifications.

Q And until you have finished talking to a customer and he has agreed to use your services you don't really know which of those twenty-one classifications he will want, do you?

A It is not true.

Q To a certain extent you know because you figure what



he probably wants?

A In my sales efforts I make it a point to find out what he will be needing.

Q That is step number one?

A After I'm allowed to go in and see him and discuss his needs.

Q And at that point if you find that his needs are such that you don't happen to have enough people in that classification, what do you do? What do you tell him?

A Nothing until we get an order from him.

Q So you don't tell him, "I'm not going to be able to fill that order"?

A We don't have an order.

Q Do you continue to press to get an order from him at that stage of the game?

A What do you mean by press?

Q You have now seen him and you have found out what his needs are and realize his needs are in classification where you don't have enough temporary personnel, do you continue to solicit his business? Or do you stop?

A If there are areas that we can fill then we will continue to solicit his business.

Q Supposing he wants people in classifications that you know you are in trouble with, all classifications that --

A I wouldn't consider him a bona fide prospect then and

I would not actively solicit his business then.

Q Now, when you got these lists, if you ever got any that would show that with regard to certain companies doing business in the Hartford area they were also doing business with Olsten franchisees in other towns, would you then go and solicit those people?

A Yes, if I was already doing business with them.

Q Of course. Well, if you were doing business with them your name or code number, whatever it was, would appear on that sheet, wouldn't it?

A I imagine so.

Q Supposing you weren't doing business with them, what would you do? If you got a sheet that said that the XYZ company which you knew had a branch or office in Hartford was doing business with Olsten franchisees in Detroit and Houston, what would you then do?

A I would go make a sales call on that company.

Q What would you tell the fellow when you saw him?

A Introduce myself, explain our services to him. I would like to start doing business with him.

Q Would you tell him that you were from Olsten?

A Of course.

Q Would you tell him that you came there because you knew he did business with Olsten in other territories?

A I imagine that I would mention during that time a

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sales presentation that we do do business with him in other cities if I knew it at the time.

Q Just keep one thing in mind, Mr. Zosucs, that we are now asking you a series of questions based on calls made on this national roster because you saw the company was doing business.

A Yes.

Q Would you call the franchisee with whom they did business to find out what their needs were generally or what kind of people they were to do business with or whether they could give you any leads to see in Hartford?

A Generally, no.

Q Generally, no?

A No.

Q You were not interested in the other franchise work?

A I wanted to find out firsthand for myself and make a personal sales call.

Q You didn't think it was of any value to have any leads or inside information that you could get from the other franchisees?

A It is a matter of priority. I think the sales call comes first and we would try to get business from them rather than having to wait two or three weeks for a reply.

Q What do you mean by waiting two or three weeks?

A Well, if I had sent a memorandum to another office

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that would mean, maybe, another week before I got a reply. I  
could maybe find out myself firsthand by making a service call.

Q Did you communicate with these other franchisees by  
letter or did you use a telephone?

A Is this in connection with the sales calls that you  
are asking me these questions?

Q Yes.

A I don't remember calling another franchisee asking  
him his experience with another account. I always made the  
sales call myself first.

Q Did you ever before you went to see one of those  
companies run a credit check with the home office?

A As I said earlier, I don't remember everyone from  
that list and the question is assuming I did and I don't re-  
member working from that list and this is all conjecture, and  
if I did, I probably would not have run a credit check if he  
were on this list.

Q You would not have?

A I imagine not.

Q Well, it is all conjecture on my part because I don't  
know what you did or didn't do. What I'm trying to find out  
is, first of all, did you ever see this list and you said you  
did?

A Yes, I did.

Q And I'm trying to find out, secondly, how often you

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saw those lists.

A I don't remember.

Q You don't remember, and I'm trying to find out whether you ever followed a lead from any of those lists.

A I would have to see the list and the account and then I can answer your question more specifically.

Q This is not the kind of information that you carry around in your head as a result of your experience?

A No, sir.

Q Okay. Now, yesterday we were talking about when you first started servicing Heublein. When was it that you said you first started servicing Heublein?

A To properly answer the question, Mr. Ribicoff, I would have to go back to the sales report. I don't carry the information in my head when I started.

Q How big a customer are they?

A I would say they are a good customer, Heublein.

Q Now, yesterday we were also talking for a while about a letter that you got in January from Olsten with regard to the contract, do you recall that?

A Yes.

Q And do you recall what the content of that letter was or what terms they offered you?

A I think the January letter stated that my franchise would be 5 per cent for two years and another figure for

additional and I don't remember the exact other figure.

Q And this was a reduction of the fees set in that September, 1970, letter which you agreed to, is that right?

A In the percentage figure, yes.

Q And after you got that letter, did you have any communications with anybody at the Olsten organization?

A Well, I was invited down to lunch in March.

Q Yes, in which you discussed the January letter?

A I don't remember specifically if the letter was discussed but the whole franchise fee renewal and rate was discussed at that date.

Q I see. Who was at that luncheon?

A Mr. Olsten and Mr. Faberman.

Q And during the course of that lunch with Mr. Olsten and Mr. Faberman, did you come to any further agreements with regard to changes in the fee schedule or anything else in connection with your contract?

A Not during the luncheon.

Q I see. What happened after? Did you come to any agreement at that March luncheon meeting?

A Not at the luncheon, but after the luncheon Mr. Faberman and I had a meeting.

Q And did Mr. Faberman and you come to any understanding with regard to any changes in your franchise agreement?

A Mr. Faberman and I had what you would call somewhat



of a heated discussion, and I mentioned to Mr. Faberman that I expected because of my contribution to the Olsten Corporation over the years that I should get a contract as good as any franchisee had in the Olsten organization and I told him that I was under the impression at the time that the 5 per cent fee was the best franchisee fee made available, and I told Mr. Faberman that is what I wanted for the life of my agreement.

Q Now, this 5 per cent fee, did you know which, if any franchisee, had a 5 per cent franchise fee?

A I had never seen another franchisee's agreement. This is over the years and I thought the 5 per cent was the best rate that any franchisee rated.

Q Well, of course, if you had not seen anybody else's agreement, did somebody tell you that they had a 5 per cent agreement?

A They said they were paying 5 per cent at a certain time. I didn't know how long the agreement ran or any details. I knew that they were paying 5 per cent.

Q Who were the people who told you that they had 5 per cent agreements or that they were paying 5 per cent, pardon me?

(Mr. Walker at this time has a silent conference with the deponent)

MR. WALKER: The reason for the conference, Mr. Ribicoff, is that Mr. Messos informs me what

conversations he had he assumed were in confidence or were said, whoever it was, confidentially and if you want the names of them and if you insist on it he can state them.

(Once again Mr. Walker confers silently with the deponent)

MR. WALKER: All right, I would like to put on the record that I assume in so revealing names here that no improper use will be put to it and that others will not suffer in any way because of it.

MR. RIBICOFF: I don't know what you mean by suffering. I don't expect anybody to suffer anything as a result of their having told you. I will assume that in any industry there is gossip back and forth. Do you mean we are going to go out and fire them or raise their rates? I doubt it. I do want the answer.

THE WITNESS: Would you like the answer?

Q Yes.

A I understand that Mr. John Linesky had a 5 per cent.

Q Where was he from?

A In Hackensack, New Jersey. There was a Gail Foster who has a 5 per cent in Tampa, Florida. There is a Mr. Gil Spiegel had a 5 per cent.

Q Where is he from?

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A Baltimore, I think he is in Baltimore, and I understood at the time that Mr. Bert Dolan had a straight 5 per cent contract.

Q Where was he?

A In Chicago.

Q And you didn't give any of these names to Mr. Faberman during that conversation, did you?

A No, I didn't review any names with him. I understood they were people who have a 5 per cent contract and I think I deserve and want the best contract that has ever been afforded any franchisees.

Q I see. Now, these people who had the 5 per cent contract, when were they paying the 5 per cent franchise fee? Was it during that period of time in 1971 when you were negotiating with Mr. Faberman? In March, '71, were they paying 5 per cent?

A I don't know when they were paying it. I just know that they had a 5 per cent contract.

Q Did you know in any case when they first had a rate that was 5 per cent?

A No, I do not.

Q Did you know that in March, '71?

A When they were paying 5 per cent?

Q Yes.

A I was led to believe that they had a 5 per cent

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straight contract.

Q From the time they started?

A Yes, from the time they started.

Q And that was your understanding?

A Yes.

Q Now, in each case with regard to these people, did you get the information from the franchisee, from each particular franchisee?

A . I think Mr. Dolan mentioned that he had a rate lower than 6 per cent.

Q Did he say it was 5 or just that it was lower than 6?

MR. WALKER: Would you please read back the question?

(Reporter reads back the last question)

A No.

Q Now, how did you learn that John Linesky had a 5 per cent rate, from whom?

A I assumed he had --

MR. WALKER: Wait a minute. Listen to the question, sir.

A How did I learn?

Q How did you learn that Mr. John Linesky had a 5 per cent rate?

A I never knew that he had a 5 per cent. I said that

I believed he had a 5 percent.

Q What led you to that belief?

A John mentioned that he had a good contract and his rate did not fluctuate.

Q Did he ever tell you it was a 5 percent?

A Not specifically.

Q He said that it was a good rate and didn't fluctuate?

A Yes.

Q And how about Gail Foster? How did you learn that she had a 5 percent rate?

A During the negotiation on my renewal I think someone in the Olsten people slipped in the fact that Gail Foster had a 5 percent.

Q And during this negotiation about renewal so far as you know it was during the year, and what part of the year did this take place?

A I think this was in August of 1970, I believe it was.

Q In August?

A That was my account.

Q I see, in August of 1970?

A Yes.

Q When you got the letter of September 11, 1970, you apparently did not raise the 5 percent question with Olsten, did you?

A Yes, I did.

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Q You did?

A Yes.

Q But you signed the September 11, 1970, letter anyway, as agreed to?

A Yes, sir.

Q And do you remember who it was in Olaton let this slip in?

A No, I do not.

Q How about Gil Spiegel? How did you learn he had a 5 per cent contract?

A Gil Spiegel, Bert Dolan, John and I had a meeting in Hartford, Connecticut, after I was made chairman of Ad Hoc Committee. I met with these three people in Hartford, Connecticut, to formulate, more or less, and try to review who would be good to serve on this Ad Hoc Committee.

At that time the question of franchise fee rates was discussed among other franchisees and that is a question that I mentioned which bothered some franchisees that there were different rates among franchisees and at that time Gil, John and Bert said it didn't affect them since they had a different contract or a special contract, more or less, that had a, you know, special rate.

Q I see, but they still didn't tell you it was a 5 per cent contract?

A No, I don't remember them telling me that it was a

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5 per cent.

Q They just said that they had special contracts?

A Yes.

Q Did these three men, Spiegel, Dolan and who was the third one?

A Linosky.

Q Did they all serve on the Ad Hoc Committee?

A Only Mr. Bert Dolan.

Q Did any of these people, Linosky, Spiegel or Dolan ask why they had special contracts?

A We didn't discuss the contracts.

Q They just said that they had a special contract but they didn't tell you what the rate was?

A The contract was in context of the rate. We didn't discuss it. We were just discussing a franchise fee rate.

Q But they didn't tell you that their rates were 5 per cent?

A No, we didn't discuss the rates.

Q So as it stands now, would it be fair to say that your position is that as of that time, March, 1970, the only person that you knew, let me put it in quotes, had a 5 per cent rate was Gail Foster because somebody in Olsten let that slip, is that right?

A Apparently, she was given a 5 per cent contract, yes.

Q But you didn't know about any of the others?

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A I didn't even know about Gail Foster. I had never seen any of the contracts.

Q So that, actually, when you say that other people had a 5 per cent franchisee contract you didn't know of a single franchisee who had that 5 per cent rate?

A I had never seen any of the contracts and I couldn't say, specifically.

Q That is not what I asked you. Let me have the question read.

A Yes.

Q Okay. You had this conference with Haberman and you told him that you wanted a 5 per cent rate and then what happened?

A He went in to see Mr. Olaten.

Q Did he come back?

A Yes.

Q What did he tell you when he came back?

A He said that he discussed it with Mr. Olaten and Mr. Olaten said, yes.

Q That you could have a 5 per cent rate?

A For the remainder of my agreement.

Q For the remainder of your agreement?

A Yes.

Q So then you left the conference at that time, and said that you were going to get the 5 per cent rate?

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A Yes.

Q You wrote the March 5th letter to Mr. Faberman telling him that you were pleased that they had agreed to keep your franchise fee at 5 per cent?

MR. WALKER: You are referring to a letter in front of you, Mr. Ribicoff?

MR. RIBICOFF: Well, he discussed it.

MR. WALKER: Well, I think in fairness to the witness you ought to, at least, show it to him.

MR. RIBICOFF: I'm sorry if I forgot it. I'm not trying to hide anything from you. It is your letter.

A Certainly not.

Q Do you remember that letter?

A Yes.

MR. RIBICOFF: May we have that marked?

MR. WALKER: All right, this will be Defendant's Exhibit No. 9.

(The above named document is marked Defendant's Exhibit No. 9 for Identification)

Q And in that letter you say in the third paragraph you are pleased that they agreed to keep the franchise fee at 5 per cent for the life of the agreement.

A Yes.

Q And as a matter of fact, 5 per cent was what you were

paying under the original agreement, wasn't it?

A Yes.

Q Now, I asked you yesterday about a meeting with a fellow named Ledwith.

A Yes.

Q Now, by any chance has your memory been refreshed since yesterday as to who Mr. Ledwith was?

A Yes.

Q He ran the transcribing services for the Olsten Corporation in New York?

A Yes.

Q And I think I asked you whether you had a conference with him in Hartford in August, and you said, no, and my question was wrong, and your answer was right. Did you have a conference in August in New York with Mr. Ledwith and Mr. Olsten?

A Mr. Ledwith?

Q Yes, and Mr. Olsten in New York in August of 1971.

A Are you asking me whether I had the conference together?

Q I'm asking you whether at some time in August, 1971, in New York you met with Mr. Ledwith and Mr. Olsten?

A Not together.

Q You met with Mr. Olsten in August of '71. Whom did you meet first on that visit?

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A Mr. Ledwith.

Q And you also talked with Mr. Olsten on that visit?

A I don't recall.

Q You don't recall?

A I don't recall.

Q Well, in any event, you met with Mr. Ledwith in New York?

A Yes.

Q And did Mr. Ledwith show you how the Olsten transcribing program worked in New York?

A He showed us what he was doing in New York.

Q And had you requested this before you went to see Mr. Ledwith?

A It was suggested that we take a trip down there by someone from the Olsten organization if we were interested in this.

Q Had you ever expressed prior to that time any interest in going into a transcribing operation in Hartford?

A No.

Q You hadn't?

A No.

Q Somebody in the Olsten organization suggested that you might be interested in this?

A One of our customers asked us if we had a facility whereby we could transcribe certain of their documents.

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Q I see, and when the customer asked you that and, incidentally, did you remember what customer it was?

A I don't think that is material.

Q If you remember, and if you don't, then you don't.

(Mr. Walker confers silently with deponent)

A Combustion Engineering.

Q And after Combustion Engineering made this inquiry what did you do about it?

A We wrote an interoffice memorandum, I believe, to either Judith Abbey or Mr. Ledwith.

Q When was this, in August?

A July or August.

Q July or August?

A Yes.

Q And what did you ask, whether they would give you any information about doing this, or whether they had an operation?

A I think what we asked generally is if there was any descriptive information concerning a transcribing service.

Q Did you at that time know that Olsten ran a transcribing service in New York?

A We did.

Q And what was the response from Mr. Ledwith?

A The response was, as I recall, no, there was not any transcriptive information and if we were interested we could

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come down and look at the facility in New York.

Q And in response to that you came down and looked at the facility in New York?

A Yes, sir.

Q And when you came down to look at the facility in New York, you didn't tell Mr. Ledwith that you had already decided that you were going to part ways with Olaten, with the Olaten organization, did you?

A No, sir.

Q Now, did Mr. Ledwith show you how their transcribing operation worked?

A He took us through and showed us the equipment, what they were doing.

Q And how they did it?

A I don't think we went into that much detail exactly how specifically but he showed us what he was doing.

Q Do you run a transcribing program now?

A No, sir.

Q Do you have any plans at the present time to have a transcribing operation?

A No, sir.

Q What did you tell Combustion Engineering?

A I don't know exactly what we told him but the end result was that we were not going to do anything and not going to go into that.

Q How did you get Combustion Engineering as a customer, incidentally?

A We made a personal sales call.

Q Did you have any leads from anybody in the Olsten office about Combustion Engineering before you made the call?

A Olsten said that they had been a very good account of theirs and as soon as you mentioned the Olsten name, carte blanche, they were so pleased with Olsten.

Q And thereafter you went to see Combustion Engineering?

A Yes.

Q What did they tell you about Olsten?

A The person at Olsten who was doing the requisition of the temporary personnel was not doing it any longer, and I didn't get a chance to say too much about Olsten because the man wouldn't see me at the beginning.

Q You kept on trying until he finally saw you?

A Yes, sir.

Q And once he saw you what did he tell you about Olsten as a service, if he told you anything?

A I don't remember what he told me about Olsten. He told me he was very pleased with another service he had been using up here.

Q Well, of course, he wasn't using Olsten up here, was he?

A No, sir.

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Q Did you say anything to him in the course of the conversation about the fact that you knew that Olsten had done work for him in other offices?

A Yes, from New York, definitely.

Q And did he know that Olsten had done work for them in New York?

A Yes, sir.

Q Did he indicate one way or the other what he thought of the work that Olsten had done?

A I don't think he made any comment either way.

Q How long did it take you from the time of your first call on Combustion Engineering before Combustion Engineering became a customer?

A I would have to check the sales records. I don't remember.

Q Would your sales records show when you made a call? Do you keep a record when you make sales calls?

A I have customer cards on some accounts and I noted the date to whom I called.

Q But do you have any kind of a diary or memorandum or any other kind of a record that shows when you made your sales calls and on whom?

A I have a customer card that has some of that information.

Q But you don't keep it as a general matter?

A I keep customer cards, yes.

Q So your customer cards would show when you made your various sales calls prior to the time they became customers?

A Yes.

Q And would it also show your calls on people who did not become customers?

A Yes, as well as I kept this record up. I don't know if I indicated every call that I made but I just put general information on the card.

Q You didn't keep it in your diary or memorandum book?

A On this customer account card I kept it.

Q That is the only place?

A Yes.

Q Now, when you were negotiating for the original contract in 1963 in fixing the initial fee how much of that fee was allotted for the Hartford - Olsten white collar portion of the franchise?

A I don't know how much was for the white collar.

Q Was there any allocation of these, initial fee at that time?

A Allocation broken down for the Hartford County, and not specifically the white collar. It was \$3500 and New Haven was \$2500, I believe.

Q And was there any breakdown between white collar and Handy Andy?

A No, sir.

Q I'm not trying to press you but I'm trying to --  
(Discussion off the record)

Q Now, there was no breakdown between the white collar and the Handy Andy?

A No, sir.

Q Now, as you recall, if you do, and we discussed this yesterday, the original agreement, the supplement to it with regard to New Haven did not say anything about Handy Andy, New Haven, did it?

MR. WALKER: Are we speaking about a specific exhibit?

MR. RIBICOFF: I'm sorry, yes. It is Defendant's Exhibit No. 1, the memorandum or write-up with regard to New Haven.

MR. WALKER: 35, 36 and 37?

MR. RIBICOFF: Yes.

(Mr. Ribicoff shows the above document to the deponent)

A There is no mention of Handy Andy in the New Haven write-up.

Q Did you understand that you were going to have a franchise for Handy Andy if you wanted it for New Haven?

A It is all part of the same agreement as far as I was concerned, Hartford, New Haven.

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Q That is not quite the question I asked.

MR. WALKER: I think we have got Paragraph 2 which speaks for itself.

MR. RIBICOFF: We have Paragraph 2 which speaks for itself with regard to Hartford, that's true, if you want to take a look.

MR. WALKER: It says you have the right to use the trademark in the name of Handy Andy.

Q Mr. Zessos, let's take a look at the bottom of Page 1 of the agreement which is Defendant's Exhibit No. 1 for Identification.

A Page 1?

Q Yes, Page 1 down at the bottom. It says the areas with the Counties of Hartford and Middlesex, is that right?

A Yes.

Q And now, if you will look at Page, Paragraph 2 with regard to Handy Andy, Paragraph 2, it says that you also have the right to use the trademark and name, Handy Andy Laborer, is that right?

A Yes.

Q And the second paragraph, Paragraph 2, it says if you use it it shall be designated as Handy Andy Laborer of Greater Hartford, Inc., is that right?

A Yes.

Q And it also said that the division shall be known

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as Handy Andy Laborer Division of Claten, Greater Hartford, Inc.  
is that right?

A That is what it says.

Q Paragraph 35 says nothing about Handy Andy.

A No, sir.

Q Is there any particular reason why you assumed that  
Handy Andy was included for New Haven?

MR. WALKER: It says the grant of license here --

MR. RIBICOFF: Mr. Walker --

MR. WALKER: You are asking him in contract terms --

MR. RIBICOFF: I'm not taking your deposition.

I am taking Mr. Ribicoff's deposition.

MR. WALKER: I object to you --

MR. RIBICOFF: Make your objection.

MR. WALKER: You are asking him to interpret  
the language of a contract.

MR. RIBICOFF: Well, in the first place, I am  
not. Let's have the question reread, and in the  
second place --

MR. WALKER: You are making an assumption as to  
what the contract means. You say, was there any  
reason why --

MR. RIBICOFF: Let's have the question read and  
then if you want to make your objection again you  
can make it. Let's have the last question read back.

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REPORTER: "Q Is there any particular reason why you assumed that Handy Andy was included for New Haven?"

A It is part of my contract.

Q Despite the fact that nothing was said in Paragraph 35?

A It is one contract together as far as I was concerned.

Q I see, so you figured that you had White Collar in Hartford, Middlesex, New Haven and also Handy Andy all in the same territory, is that right?

A That is what it says in my contract.

Q Now, would you take a look again at Paragraph 2, the first paragraph of Paragraph 2 which says that Handy Andy would be started six months after the date, is that right?

A Yes.

Q And of course, actually, you didn't start it within six months, did you?

A No.

Q And at any time up to March or April of 1967 when you said they started, and the Olsten people started to press you on Handy Andy, did anybody from the Olsten organization ever tell you that you had to open a Handy Andy office in either Hartford or New Haven?

A The first mention was made about Handy Andy starting

Q Now, who did that? Who for Olson organization or was it Mr. Olson himself?

Q Now, who did that? Who for Olson organization or was it Mr. Olson himself?

A Mr. Reidinger was put in charge of the division at the time to open the new Handy Andy office, as I remember, and Mr. Margoland called us many many times and the date I had given you was not exactly correct, and after Mr. Margoland apparently left the country and then Mr. Harry Graves took over the operation.

Q Who started pressing you in 1968, in the fall of 1968?

A Mr. Margoland called us many times and Mr. Olsen requested that we open a Handy Andy office and letters were sent us and renewed efforts were going in to the Handy Andy office.

Q When you say they started, whatever term you used, what specifically did Mr. Margoland say in the fall of 1968?

A I cannot remember specifically. Generally, El  
Marcoland and Mr. Reidinger at different times were telling  
us what a lucrative business it was, and what a low cost  
operation and mark-up organization Mandy Andy was.

2 Did they ever tell you that you had to go into it other than the fact that it was lucrative?

A They did not.

Q Did anybody ever tell you at any time whether there would be any penalty of any kind if you failed to open a Handy Andy office?

A No.

Q Now, what records did you check between yesterday and today that enabled you to bring the date from March or April of 1969, back to the fall of 1968?

A I had some notes of conversations with -- not conversations, but telephone calls from Ed Margoland and plus I checked with Jerry Pangakis who was at the time in charge of our New Haven operation to refresh our memory on the approximate dates.

Q It was still only approximate dates. Did you have any specific memoranda of telephone conversations in 1968?

A No.

Q How did you reach the conclusion that it was '68, rather than '69?

A Because when I met with Mr. Olsten to amend my agreement at that time we had made a decision that we would, no doubt, open a Handy Andy office in September of '67.

Q I see. This is when you met with Mr. Olsten to negotiate what agreement, the '69?

A My amendment.

Q Your amendment of 1969?

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A Yes.

Q That is Defendant's Exhibit No. 8, right?

A Yes.

Q Now, Defendant's Exhibit No. 8 was executed sometime in '69, is that right?

A Yes.

Q And when did you have your conferences with Mr. Olsten about the amendment of August, '69, in the fall of '69 or in the spring of '69?

A It was in the spring of '69.

Q And then it was in the spring of '69 that you started talking about opening a Handy Andy office, isn't that so?

A No, we apparently were talking about it in the winter of '68 and the early winter of '69.

Q Now, when was it that you told Mr. Olsten, or whoever was in the Olsten office you did talk to, that you proposed to open a Handy Andy office in September of 1969?

A Well, Mr. Olsten was aware of it when we amended my agreement.

Q I see. In other words, when this agreement, Defendant's Exhibit No. 8 for Identification, was executed you had already told Mr. Olsten that you planned to open a Handy Andy office in September of '69.

A Yes.

Q Did you tell him what day?

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A No, sir.

Q Did you tell him that you planned to open a Handy Andy office in both Hartford and New Haven by September of '67?

A We had not made a decision what city to open in.

Q Who ultimately made the decision for New Haven, rather than Hartford?

A Mr. Margoland came up, reviewed New Haven and Hartford and thought New Haven would be a better area than Hartford for a blue collar operation.

Q And when did he come up and tell you this?

A It must have been in early winter of '67 or, again, the late '68. I don't remember the exact dates.

Q But, apparently, as of the time you executed this amendment to the agreement which is Defendant's Exhibit No. 3 for Identification, according to what you told us you had not yet decided which city it was to be in, is that right?

A When I discussed it with Bill about this in March, I don't remember if we decided what city. I don't think we did.

Q And thereafter some time between March and sometime after August when you signed this amendment, which is Defendant's Exhibit No. 3 for Identification, a decision was made that it would be New Haven rather than Hartford, isn't that right?

A Yes, it was.

Q And who made that decision?

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Hartford or New Haven, isn't that right?

A I signed it in August?

Q Yes, that is what it says on the second page, August '69?

A The correspondence was sent down to the Olsten Corporation in March. I got this back in August. The letter was several months later.

Q Well, in March you had not yet decided between Hartford and New Haven, is that right?

A I don't remember the exact date when the final decision was made.

Q That is what I'm trying to see if you can place it. It was sometime between March and August or sometime between March and a period later than August?

A It must have been between January and March, the time when Ed Margoland was coming up it was our intention to open in either Hartford or New Haven.

Q All right, but what I'm trying to find out is if you can tell me approximately when you decided New Haven rather than Hartford?

A I cannot give you a definite answer when we decided.

Q But it was not in March, apparently.

A I don't remember the exact date. I would have to check it.

Q When did you actually open the Handy Andy office in

A Well, the decision had to be ours, based on the recommendation of the Olsten organization.

Q Who made the decision, you or the Olsten organization?

A We made the decision.

Q You made the decision?

A Yes.

Q Did Olsten tell you to go to New Haven rather than Hartford?

A No, sir.

Q Did Reidinger tell you to go to New Haven rather than Hartford?

A No, sir.

Q Did Graves tell you to go to New Haven rather than Hartford?

A I don't remember.

Q Did Margoland tell you New Haven rather than Hartford?

A He felt that New Haven would be a better market than Hartford.

Q And Mr. Margoland told you that in 1968?

A I don't remember the exact date or the sequence of it but his feeling was that New Haven would be a better blue collar area than Hartford.

Q In August when you signed this amendment to the agreement which is Defendant's Exhibit No. 8 for Identification, you had not yet made up your mind whether it was going to be

New Haven?

A In September of '69.

Q And do you recall how long it was prior to September '69 that you made the decision that you would open in New Haven?

A I don't recall, Mr. Ribicoff.

Q A month before?

A It would have to be many many months before.

Q Six months before?

A It would approximately have been six months before in order for us to get going.

Q Now, when you made the decision that you were going to open in New Haven rather than Hartford, did you also make a decision that you would not open in Hartford at the same time?

A Yes.

Q And did you make any decision as to when you would open in Hartford?

A Not at that moment.

Q What did you feel, that you wanted to see how New Haven went first?

A Yes.

Q Now, when you signed this agreement in August of 1969, which is Defendant's Exhibit No. 8 for Identification, there was a time period to open the Andy Andy office in

Hartford extended to December 31, 1969?

A Yes.

Q Any particular reason why at that time you didn't ask that it be limited to New Haven rather than Hartford with the December 31, '69 date?

A Mr. Olsten wanted a Handy Andy office opened. He didn't care whether it was Hartford or New Haven by December 31, '69.

Q But at that time you already knew that you were going to open in New Haven. You said you had made up your mind on that six months before.

A I said we knew that we were going to open a Handy Andy office.

Q Well, that gets us back, you see, and you misled me a little bit. When did you decide that you were going to open in New Haven and not in Hartford?

A I don't remember the exact time.

MR. WALKER: Tell him if you can recall, and give him an approximation and do it the best way you can.

A I just can't recall when the final decision was made to open in New Haven.

Q At the time you signed the agreement, the amendment of the agreement in August of 1969, which is Defendant's Exhibit No. 8 for Identification, had you already made up your

mind that you were going to open in New Haven?

A Yes, when I signed it.

Q I know you signed it. I asked whether at that time you had already made up your mind that you were going to open up the --

A I said, yes, when I signed.

Q When you signed it you knew it was going to be New Haven?

A Yes.

Q And how much leave time had you given yourself in terms of opening a Hartford office?

A A Handy Andy Hartford office?

Q Yes.

A We didn't consider a Handy Andy office in Hartford at that time.

Q Well, can you tell us why you didn't ask that this amendment be changed to be referred only to New Haven and not Hartford?

A No.

Q Did you tell anybody in the Olaten organization whether you ever did intend to open a Handy Andy office in Hartford?

A I don't think anybody ever asked me.

Q Did anybody ever ask you whether you were going to open an office in New Haven?

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A Yes.

Q As of August, 1959 when you signed the amendment which is Defendant's Exhibit No. 8 for Identification, had you already told Olsten that you were going to open an office in New Haven?

A Yes.

Q And had you already told anybody in the Olsten organization that you were going to open an office in Hartford within by the end of 1959?

A No, sir.

Q Had you told anybody in the Olsten organization that you would not open an office in Hartford by the end of 1959?

A No, sir.

Q Had you told anybody in the Olsten organization that you had any kind of a time table for opening a Handy Andy office in 1959?

A No, sir.

Q What kind of a commitment did you think you were making when you signed this agreement which is Defendant's Exhibit No. 8 for Identification and said that you would open a Handy Andy office in Hartford by December 31, '67?

MR. WALKER: I will object to the form of that. You are asking for a legal conclusion of a document which speaks for itself.

MR. BIRCHOFF: I'm not asking for a legal



conclusion. I'm asking what kind of commitment he as a layman thought he was making and I don't care what the legal significance of that was.

A The commitment was that I had to open a Handy Andy office.

Q Somewhere?

A New Haven or Hartford and Olsten didn't care as long as I opened it.

Q One?

A Yes, one at that time.

Q And, therefore, did you ask Bill Olsten or anybody in the Olsten organization what would happen if by December 31, 1969, you had only opened one office instead of two?

A No, sir.

Q Did anybody in the Olsten organization volunteer to you or tell you without being asked what, if anything, they would do if you did not open both offices by December 31, 1969?

A No.

MR. RIBICOFF: It is about time for a break.  
(Recess)

BY MR. RIBICOFF:

Q Mr. Zessos, yesterday we were talking about various communications, whatever you had, with Olsten franchisees prior to the time you ended your relationship with Olsten. After you ended your relationship with Olsten, did you have any

franchisees of the Olsten Corporation?

A Well, I think there is a copy of the letter I sent.

MR. WALKER: Can you answer it, yes or no, to be responsive.

A I'm sorry, yes.

Q With whom, do you recall which ones?

A All of them.

Q All of them?

A Yes.

Q Now, what do you mean by all of them?

A Every franchisee.

Q Did you talk to them or write them a letter?

A I wrote them a letter.

Q And when did you write them a letter?

A By the middle or the end of October. I don't remember the exact date.

Q And that is a letter in connection with which you gave us by discovery?

A Yes.

Q Other than that letter did you have any contact with people who were franchisees after you terminated November 1, 1971?

A I got a telephone call from John Linecky after Mr. Olsten had called him and told him that I was no longer with Olsten and he called me and, you know, he said, "You are my

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friend and I would like to think that Bill is my friend and wish you luck," and that was it and I never heard from him again.

Q Anyone else?

A Is this before or after?

Q After November 1, 1971, and whether before or after the letter, from November 1st to today.

A I also got a call from a Jim Clinton. I got a telephone call from a Millard Roth who were Olston franchisees.

Q Any others?

A A letter from a Dick Molinaro, and I believe that is it.

Q Do you know whether in these materials that were produced the Molinaro letter is included?

A Yes, it is. I believe it is.

Q Now, who was Jim Clinton?

A Jim is a franchisee in Parsippany, New Jersey.

Q And how about Millard Roth?

A Millard is in Canada.

Q And where was Dick Molinaro?

A I believe Seattle.

Q And that is all among the various Olston franchisees?

A Yes.

Q Now, I show you this copy of a memorandum to -- well, it seems to be from Dean Zennos to Jim Clinton but it looks

like it is from Jim Clinton to you. Which is it?

A I think it is to me from Jim Clinton, yes.

Q This is a memorandum dated February 2, 1972, and may we have that marked for identification and that will be Defendant's Exhibit No. 10 for Identification.

(The above named document is marked Defendant's Exhibit No. 10 for Identification)

Q Is this Bob Goodfriend who received a copy of this memorandum this same fellow you mentioned you talked to before you terminated with Claton?

A Yes.

Q And, apparently, judging from this Defendant's Exhibit No. 10 for Identification, you were trying to set up a date to meet with Mr. Clinton and Mr. Goodfriend?

A No, sir. Jim was trying to set up a date.

Q And did such a meeting ever take place?

A Yes, sir.

Q When?

A I believe March 1st, I think, March 1st.

Q And where did it take place?

A In Hartford.

Q Just the three of you, or were there any others present?

A Just the three of us.

Q What was the subject of that meeting?

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A They wanted to know how I was doing; how everything was going and they wanted to review my systems, my bookkeeping systems, and my basic accounting operations.

Q Any discussion of the Olsten organization?

A It was mentioned.

Q After that meeting did you have any further communication thereafter with Clinton?

A Jim and I have spoken over the telephone from time to time.

Q Again, about what, anything in particular?

A Basically, about our internal bookkeeping procedure operations.

Q I see. How about Goodfriend? Have you talked to Goodfriend since that meeting?

A Yes.

Q How frequently?

A I have spoken to him, say, several times.

Q Have you spoken to Goodfriend since the Olsten suit against Goodfriend?

A Yes, sir.

Q When was that?

A Well, the last time I spoke to Mr. Goodfriend was about two or three weeks ago, so I imagine Olsten filed suit against him, and I don't remember the exact date.

Q Did you discuss the suit or the nature of the suit

with him?

A We mentioned the suit and didn't go into any detail about it.

Q Were there any discussions of the various suits by and against you and Olsten? That is not very good sense. Were there any discussions about the suits involving you and Olsten?

A Bob was aware that my records had been taken and I mentioned that to him, and also mentioned that we had filed suit against the Olsten Corporation.

Q And did you discuss the nature of the suit?

A We didn't go into any detail as far as the legal matters were concerned.

Q Did you tell him that there was an antitrust action?

A I don't believe so.

Q Did he tell you that he was contemplating an antitrust action against Olsten?

A I think he had mentioned that to me some time ago. I didn't know the nature of the suit and he mentioned antitrust.

Q Have you talked to Mr. Goodfriend since he settled his suit with Olsten?

A I spoke to him once and he said the suit had been settled. He called me to tell me the suit had been settled.

Q Did he tell you under what terms?

A Yes.

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Q Did you ask him?

A No, sir.

Q Now, I show you this letter and ask you if that is a letter you received?

MR. RIDICOFF: May we have that letter marked?

It is dated December 9, 1971, and it will be Defendant's Exhibit No. 11 for Identification.

(The above named document is marked Defendant's Exhibit No. 11 for Identification)

Q Now, Mr. Zarnes, looking at Defendant's Exhibit No. 11 for Identification as the letter referred to you there in the first line, is that the form letter that you send out to all franchisees?

A Yes.

Q And there is also reference to a prior telephone conversation. Can you tell us what the substance of that conversation was?

A Well, as I recall, Millard called me after he received Mr. Olsten's letter and after he received mine.

Q I see, and what did you talk about?

A He again asked me how everything was going and asked me about my basic systems; what I was doing in payroll and I was doing my internal bookkeeping operations, and he also asked me about any legal implications.

Q Apparently, he asked you for the October 30th letter

-289-

which your attorney sent to the Olsten Corporation.

A Yes, sir.

Q And you sent him a copy of that letter, did you?

A I may have, but I don't remember if I did.

Q Why was he asking you about your systems since you were as of that time freshly away from the Olsten systems?

A I don't know.

Q You don't know?

A No.

Q Did he ask you whether you had changed your system since you had left Olsten?

A What he asked me was an outline of the systems that I'm basically using.

Q Since you parted ways with Olsten?

A I think the letter just reads, any systems that I am currently using that I was presently using as of the date of that letter.

Q Well, up to November 1, 1971, you were using the same systems as he was, weren't you?

A Yes.

Q And he was an Olsten franchisee?

A Yes.

Q And an Olsten franchisee had different systems?

A They did.

Q So you discussed the systems?

A Yes.

Q Anything else?

A He asked me about the legal question, what had happened.

Q And you told him?

A I did not.

Q Okay, did he discuss with you the question of his terminating his franchise with Olsten?

A He mentioned to me that he was not happy with the Olsten organization.

Q Did he discuss with you any expectation or intention on his part to leave the Olsten system?

A No.

Q He did not?

A I don't remember him mentioning any intention of leaving the Olsten organization.

Q Did you ask him whether he had any intention of leaving the Olsten organization?

A I don't recall if I did.

Q Did he ask you whether you could give him any help if there were any legal problems that he left the organization?

A Anything pertaining to anything legal I just referred him to contact his own lawyer or have his lawyer call my lawyer. We did not get into a legal question. I wouldn't do it.

Q To your knowledge is he still an Olsten franchisee?

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A I believe he is.

Q And to your knowledge has he ever adopted or used any of your systems?

A No, he has not.

Q Now, how about Mr. Clinton? Is he still an Olsten franchisee?

A Yes, he is, I believe.

Q Now, did you send Mr. Clinton any forms?

A Do you mean bookkeeping forms?

Q Whatever it was you discussed with him and Mr. Goodfriend.

A They came up to visit with me. I didn't send them anything.

Q Did they pick up forms when they were there?

A I think the payroll forms they picked up.

Q And that's all?

A I believe that's all. I don't know what they picked up.

Q And were you using payroll forms that were different from those that you had used as an Olsten franchisee?

A The same payroll journals.

Q That you had used as an Olsten franchisee?

A While he is an Olsten franchisee, the same payroll system.

Q And were the payroll systems different than those

used by Olsten organization?

A To my knowledge, it was.

Q I show you this letter and is that letter your response to Mr. Roth's letter?

(Mr. Ribicoff shows the above mentioned letter to the deponent)

MR. WALKER: There is a question.

THE WITNESS: I'm sorry, what was the question?

Q Is this letter that I hand you a response to Mr. Roth, replying to his letter which is Defendant's Exhibit No. 11 for Identification?

A Yes.

MR. RIBICOFF: May we have that marked, please?

MR. WALKER: That will be Defendant's Exhibit No. 12 for Identification?

MR. RIBICOFF: Yes, Defendant's Exhibit No. 12 for Identification.

(The above named document is marked Defendant's Exhibit No. 12 for Identification)

Q Mr. Zensos, after the letter which is Defendant's Exhibit No. 12 for Identification, did you have any further communications or contact with Mr. Roth?

A After the letter of December 22, 1971?

Q Yes.

A I called Mr. Roth about a week ago.

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Q About a week ago?

A Yes.

Q I see, and at that time did you discuss with Mr. Roth the possibility of his leaving the Clatsen organization?

A No, sir.

Q Did you discuss this lawsuit with him?

A No, sir.

Q What did you discuss with him?

A I mentioned that my deposition was being taken and that I was requested to turn over copies of these letters to Ribicoff & Kotkin and I asked him if it was all right with him and how he felt about it.

Q I see, and what did he say?

A He said, "Dean, I would prefer that you do not, since it came from somebody who is still inside the Clatsen organization but, however, if your lawyer feels that there wouldn't be any reason not to give it to them, then show it to them." In other words he said, "Go ahead, if you want to."

MR. RIBICOFF: Pardon us for a couple of minutes. We have to take a short recess.

(Short recess)

Q Mr. Zamos, have you heard of an organization called the I.O.S.I.?

A Yes.

Q What is the name of the organization that goes by

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those letters?

A It is the Independent Office Services Institute.

Q And did you at any time make application or communicate with the I.O.S.I. in regard to your becoming a member?

A Yes.

Q And when was that, the first time?

A I was invited to a meeting, I believe, in February of '72.

Q Which was to be held when?

A To be held in April.

Q Where?

A I have forgotten where the meeting was going to be held.

Q I show you this letter.

(Mr. Ribicoff shows deponent the above letter)

Q Is that an invitation to the meeting that you are referring to?

A Yes, sir.

MR. RIBICOFF: May we have that marked for Identification, and that is a letter of an announcement of spring convention to all I.O.S.I. members and prospective members dated January 5, 1972.

May that be marked Defendant's Exhibit No. 13 for Identification?

(The above named document is marked Defendant's

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Exhibit No. 13 for Identification)

Q Prior to that letter or announcement, which is Defendant's Exhibit No. 13 for Identification, had you had any communication with anybody connected with the I.O.S.I.?

A Mr. George Corey had mentioned the organization to us who has an office in New Haven, a blue collar organization and a Mrs. Ruth Green of Potomac Temporaries in Washington, D. C. mentioned it to me.

Q And had you had any communication with anybody who was an officer of involved directly with I.O.S.I.?

A Not to my recollection.

Q And were Corey and Green members to your knowledge?

A Yes, they were.

Q I see, and judging by the notation -- there is a notation in your handwriting, is there not?

A Yes, it is.

Q And you apparently decided that you would go.

A Yes, sir.

Q I show you this letter and is that a copy of a letter written by you?

(Mr. Ribicoff shows the above letter to the deponent)

A Yes, it is.

MR. RIBICOFF: May we have that marked, and it is a letter from Mr. Zessos to Wilma Cheeli and it

is dated February 9, 1972. May that be marked Defendant's Exhibit No. 14 for Identification?

(The above named document is marked Defendant's Exhibit No. 14 for Identification)

Q Now, after you sent that letter of February 9, 1972, did you hear from Miss or Mrs. Cheeli?

MR. WALKER: It is Miss, I think it is.

Q All right, then, Miss.

A Well, I don't recall who contacted us but we did hear from the organization.

Q I see, and did somebody contact you with regard to becoming a member?

A Somebody contacted us and said that we would not be able to go to the meeting.

Q And do you recall who that was?

A I think Mrs. Green or Mr. Rose called us and said that we would not be able to go to the meeting.

Q And did whoever it was who called you tell you why?

A Yes.

Q What did they tell you?

A Apparently, Mr. George Corey was upset that we were invited without his approval and wrote a letter to the president of the organization and had us bumped out from the invitation.

Q I show you this document, Mr. Zocco, and ask you whether you have seen that before?

(Mr. Ribicoff shows the above named document to deponent)

A Yes, sir.

MR. RIBICOFF: May we have that marked Defendant's Exhibit No. 15 for Identification and it is an I.O.S.I announcement undated.

(The above named document is marked Defendant's Exhibit No. 15 for Identification)

Q Mr. Zessos, concerning Defendant's Exhibit No. 15 for Identification there is some writing in the lower lefthand corner. Is that your writing?

A It is.

Q Can you tell us what it says?

A It says "Application pending decision by By-laws Group".

Q So in other words, your application at that time you thought was in for membership?

A No, it was pending a decision by the By-laws Group.

Q As to whether they would accept your application, or as to whether they would accept you as a member, which?

A We never filed a formal application. They were discussing us as members. We never had a formal application filed.

Q I want to show you this letter which I assume was a copy of a letter you wrote.

(Mr. Ribicoff shows the above letter to deponent)

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THE WITNESS: Yes.

MR. RIBICOFF: That will be Defendant's Exhibit No. 16 for Identification, a letter dated April 20, 1972.

(The above named document is marked Defendant's Exhibit No. 16 for Identification)

Q And am I correct that Defendant's Exhibit No. 16 for Identification refers to the fact that the invitation had been withdrawn?

A Yes.

Q And that was as a result of the activity of Mr. Corey that you mentioned?

A Yes.

Q And who communicated that information to you?

A I don't recall exactly. I believe a Mrs. Green called me and apologized that she was a little embarrassed that this had happened.

Q Now, thereafter did you ever make an application for membership in the organization?

A No, sir.

Q I show you this announcement, and I assume this is something you have seen.

(Mr. Ribicoff shows the above document to the deponent)

A Yes, sir.

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MR. WALKER: Is that Defendant's Exhibit No. 17?

MR. RIBICOFF: Yes, that will be marked Defendant's Exhibit No. 17 for Identification, an announcement of I.O.S.I. dated August 16, 1972.

(The above named document is marked Defendant's Exhibit No. 17 for Identification)

Q And did you accept that invitation?

A Yes, sir.

Q Did you attend the meeting in Ottawa?

A Yes.

Q Did anybody go along with you from the organization?

A Yes, Mr. Pangakis.

Q And prior to the time that you went up to Ottawa had you put in an application for membership?

A No, sir.

Q Did you make an application for membership while you were at Ottawa?

A No, sir.

Q What happened at Ottawa when you attended?

A When we first arrived the president of the organization, a Mr. Bill Rose, mentioned to me and Mr. Pangakis that a member or some members were a little concerned because, apparently, there is a legal problem.

Q A legal problem? What do you mean by a legal



problem?

A There was a legal problem between Capital Temporaries and Clsten.

Q What else did he say?

A He asked me what the situation was, and after a very short discussion he said, There doesn't seem to be a problem as far as I am concerned, and invited us to stay.

Q And did you stay?

A We stayed for another day.

Q And then what happened that day?

A We attended the first day's meeting and then were invited to a cocktail party that evening in the host's office, Stanley Aaron's personnel office.

Q And what happened then?

A During the cocktail party, apparently, someone continued to complain that we were allowed to attend the meeting, even though the president had said that everything as far as he was concerned was in order, and at the cocktail party I was advised that there would be a special meeting the first thing in the morning before the actual business meeting got ready the next day, and they would advise us whether or not we would be allowed to stay.

Q And was such a meeting held?

A I believe it was.

Q And were you asked to take part?

A No, we were asked to leave.

Q I show you this letter dated November 14, 1972, which I assume is a copy of the letter.

(Mr. Ribicoff shows the above letter to the deponent)

THE WITNESS: Yes.

MR. RIBICOFF: That will be marked Defendant's Exhibit No. 18 for Identification, which is a letter from Mr. Zessos to Mr. Rose dated November 14, 1972.

(The above named document is marked Defendant's Exhibit No. 18 for Identification)

Q Did you hear anything further from Mr. Rose or anybody else connected with I.O.J.I. after the above letter for identification?

A We received a check in the amount of \$396.40 to reimburse us for our plane fare and the registration fee.

Q And that's all?

A That's all.

Q And I assume that this was typed by that same temporary that you had?

A No, we sent the written letter. This was corrected.

Q Mr. Zessos, I show you this document and ask you if you received a copy of that?

(Mr. Ribicoff shows the above named document to the deponent)

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THE WITNESS: Yes.

MR. RIBICOFF: That will be marked Defendant's Exhibit No. 19 for Identification.

(The above named document is marked Defendant's Exhibit No. 19 for Identification.)

MR. RIBICOFF: This is a bulletin from Stanley Aaron, Personnel, dated October 19, 1972.

Q Now, did you respond to that bulletin which is Defendant's Exhibit No. 19 for Identification?

A I don't believe so.

Q Do you have any plans to attend the 1973 spring conference?

A If I am invited I will make the decision at that time.

Q The decision as to whether your application for membership will be considered further, apparently, hasn't been made so far as you know?

A I have never put in an application for membership as the organization doesn't work that way.

Q In other words, they neither invite you or don't invite you and you cannot apply for membership, is that right?

A As I understand it.

Q Does anyone from I.O.S.I. intend to consider further whether you become a member of the organization at this time?

A Mr. Rose, before we left mentioned to me that once

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the legal question had been completely settled to please let him know and that is how we left it.

MR. RIBICOFF: I think it is a little late to start a new subject.

(And thus the deposition was adjourned at 4:45 P.M. to a continuation date)

\_\_\_\_\_  
Deponent

Subscribed and sworn to before me on this the

\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

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FILED

MAY 23 2 45 PM '73

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CAPITAL TEMPORARIES OF  
HARTFORD, INC., ET AL

: CIVIL ACTION NO. 14749

VS.

:

THE OLSTEN CORPORATION

: MAY 23, 1973

MOTION FOR PARTIAL SUMMARY JUDGMENT

The plaintiffs respectfully move the Court to enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment, on the issue of liability only, in the plaintiffs' favor, as to the claim alleged in the Fifth Count of the Complaint, on the ground that there is no genuine issue as to any material fact, that the defendant, as a matter of law, has imposed a tie-in, illegal per se under Section 1 of the Sherman Act, and that therefore the plaintiffs are entitled to judgment as to liability as a matter of law.

This motion is based upon:

- a) the pleadings filed in this case;
- b) the Affidavits submitted by the defendant in its Motion for Summary Judgment as to said Fifth Count;
- c) the annexed Affidavit of Constantine T. Zessos and Exhibits thereto; and
- d) the annexed Memorandum of Law in Support of the Plaintiffs' Motion for Partial Summary Judgment and in Opposition to the Defendant's Motion for Summary Judgment.

The plaintiffs request that this Motion and the defendant's Motion for Summary Judgment, heretofore filed, be consolidated for argument in Hartford as soon as counsel may be heard.

*6.6.73  
TC Clerk  
on June 25  
will get on  
R. V. Smith  
advised him of this*

PLAINTIFFS

BY *Philip S. Walker*  
Philip S. Walker, of  
Day, Berry & Howard  
One Constitution Plaza  
Hartford, Connecticut 06103

I, PHILIP S. WALKER, do hereby certify that a copy of the foregoing Motion for Partial Summary Judgment, annexed Affidavit and Memorandum of Law was hand delivered this 23rd day of May, 1973 to Irving S. Ribicoff, Esq. and Matthew J. Forstadt, Esq., of the firm of Ribicoff and Kotkin, 799 Main Street, Hartford, Connecticut 06103, in accordance with Rule 5 of the Rules of Procedure of this Court.

*Philip S. Walker*  
Philip S. Walker

ORDER

This cause came to be heard on Motion of the plaintiffs for a summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and the Court having considered the Affidavits and other documents on file, having heard oral argument, having found that there is no genuine issue as to any material fact, except as to the amount of damages, and having concluded that the plaintiffs are entitled to judgment as to the Fifth Count as a matter of law for such amount as shall be found due to them as damages,

IT IS ORDERED that summary judgment be entered in favor of the plaintiffs as to the Fifth Count for such amount as may be due them as damages.

\_\_\_\_\_  
United States District Judge



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

CAPITAL TEMPORARIES OF  
HARTFORD, INC., ET AL

CIVIL ACTION NO. 14749

VS.

THE OLSTEN CORPORATION

MAY 23, 1973

AFFIDAVIT IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT AND IN  
OPPOSITION TO DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT

Constantine T. Zessos, of Wethersfield, Connecticut, being  
duly sworn, deposes and says:

1. That I am over 21 years of age and believe in the  
obligation of an oath.
2. That this affidavit is made on my personal knowledge.
3. That I am the President of Capital Temporaries, Inc.  
of Hartford and Capital Temporaries, Inc. of New Haven, plaintiffs  
herein.
4. That before being solicited for Olsten by Anthony V.  
Soupios, then defendant's comptroller, I had never heard of the  
Olsten Corporation, or any of its operations.
5. That during the course of the negotiations leading up  
to the agreement of September 17, 1965 which I executed with the  
defendant, the Olsten "white collar" franchise and the Handy Andy  
"blue collar" franchise were always offered as a package and I  
was never given an opportunity to accept one without the other.
6. That the September 17, 1965 agreement was drafted by  
and prepared by Olsten as were the subsequent rider thereto and  
the amendment of August, 1969.

7. That in 1968 because I was concerned that I was being expected to pay higher franchise fees than other Olsten franchises, and Olsten at that time was in the process of becoming a publicly held corporation, I advised Olsten that I wished to negotiate some parts of the agreement.

8. That in connection with these proposed negotiations, I asked my attorney at the time, John Poulos, to review the September 16, 1965 agreement.

9. That my attorney pointed out that I had not opened a Handy Andy office in accordance with the terms of the agreement and suggested that I obtain a waiver of my failure to comply in this regard.

10. That I thereafter discussed my agreement with William Olsten, the defendant's President, who initially agreed that I could open a Handy Andy office at a time of my selection without an initial license fee.

11. That thereafter Mr. Olsten changed his position and insisted that a definite deadline for opening a Handy Andy office be inserted into the August 1969 amendment to the agreement of September 17, 1965. This date was December 31, 1969. (See Exhibit 3 to defendant's Brief: "Handy Andy--Bill wants me to open no later than December 31, 1969" and my April 18, 1969 letter annexed as Exhibit 1, hereto).

12. That although I did not for business reasons want to open a Handy Andy office during the time period 1968-1969, I was told by Mr. Olsten that I must do so because "it was in my contract" and was further promised that the Olsten organization would give full support to such an office.

13. That in September of 1969 I opened a Handy Andy office at 394 Crown Street in New Haven, separate from the white collar location at 900 Chapel Square as required by Olsten.

14. That Olsten projected that the New Haven Handy Andy office would reach a goal of an average of 3,500 billable hours of temporary blue collar personnel weekly by August 31, 1970.

15. That at the rates then prevailing, (using a minimum figure of \$2.50/hour) the average gross billings for this volume would have been approximately \$8,750.00 per week or \$455,000 per year with franchise fees thereon flowing from Connecticut to Olsten in New York.

16. That this projection from Olsten is set forth in a memorandum from Harry C. Graves, Handy Andy General Manager for the defendant Olsten, dated November 25, 1969, a copy of which is annexed as Exhibit 2.

17. That the customers serviced by the Handy Andy office in New Haven included almost entirely companies involved in interstate commerce.

18. That the New Haven blue collar temporary services market was also served by competitors of Olsten, i.e., Kelly Labor Division, Manpower, Staff Builders and Temporary Labor Corporation, the first three of which are affiliated with national temporary services organizations. See the October 21, 1969 memo to Mr. Harry Graves from Mr. John J. Sullivan of the Philadelphia Handy Andy office, annexed as Exhibit 3.

19. That I was advised by the defendant, through a memo addressed to Mr. Olsten dated March 9, 1971 annexed hereto as Exhibit 4, that one of my competitors in New Haven, Manpower,

had a gross volume in its New Haven blue collar operation of approximately \$337,500 in 1969.

20. That the Handy Andy office in New Haven was opened between September 1969 and June of 1970 and during that time had gross billings of approximately \$73,000.

21. That I never received the promised support from the Olsten operation for the Handy Andy office.

22. That because of the unprofitability of the Handy Andy office in New Haven, I was required to close the same in June of 1970.

23. That the Handy Andy office in New Haven was carried on under a separate corporation incorporated under Connecticut law as Handy Andy Labor of New Haven, Inc.

24. That both for the white collar offices in Hartford and New Haven using the Olsten trademark, and for the blue collar office in New Haven using the Handy Andy trademark, the entire investment and the obligations of the businesses were borne by myself and at no time did the defendant Olsten ever make any investment in these businesses.

25. That in accordance with the agreement of September 17, 1965, the plaintiffs were responsible for the payment of all salaries and wages or other compensation to the employees, and for the payment of any and all taxes. They furthermore had to maintain all insurance and to pay the overhead of the offices. All temporary personnel who were sent out by all offices were obtained by and paid by the plaintiffs and all customers for all offices were solicited by the plaintiffs and their accounts were successfully maintained by the efforts of the plaintiffs.

26. That the September 17, 1965 agreement, with amendments thereto, terminated by its terms on October 29, 1970.

27. That the plaintiffs thereafter continued on a month-to-month basis as a licensee of the Olsten trademark until October 31, 1971.

28. That during the year between the termination of the written agreement and the cessation of any business at all under any of the Olsten trademarks, the plaintiffs paid franchise fees from gross billings under a payment schedule with Olsten at a five percent rate.

29. That during said period the plaintiffs and the defendant negotiated with respect to a new agreement, the last proposal being made by the defendant being set forth in a letter from Olsten's President, Alec Faberman, annexed as Exhibit 5, proposing that there be a five percent franchise fee for the rest of my natural life. This proposal was unacceptable to me and was never agreed to by the plaintiffs.

30. That as of October 31, 1971 the plaintiffs ceased completely doing business under the Olsten trademark, changed the names of the corporate plaintiffs to their present appellation, and advised both customers and temporary employees that they were no longer affiliated with the Olsten organization.

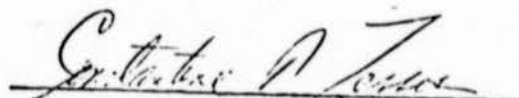
31. That at that time a new telephone number was obtained and those calling the old number were advised that the plaintiffs were no longer affiliated with the Olsten organization.

32. That between September 17, 1965 and October 21, 1971, the plaintiffs paid Olsten in excess of \$165,000 in franchise fees.

33. That on or about November 30, 1971 I was served with the Complaint in a case brought to this Court by the defendant, herein, entitled The Olsten Corporation v. Constantine T. Zessos, et al, Civil Action No. 14760, copies of which Complaint and the attachments thereto are annexed to this affidavit as Exhibit 6.

34. That at the time service was made upon the plaintiffs in the action returnable to the Superior Court for Hartford County by writ dated November 10, 1971, (see Affidavit of William Olsten, paragraph 44) the defendant Olsten caused to be seized, without judicial hearing, the office records of the plaintiffs herein containing their inventory of temporary employees which was developed solely by the plaintiffs at their sole expense.

35. That the plaintiffs were thereafter deprived of these vital business records by Olsten, in spite of their posting a bond in lieu of attachment, until Olsten was served with an Order dated January 10, 1972 signed by the Honorable Walter J. Sidor, Judge of the Superior Court, to appear for a hearing on January 18, 1972 on a motion for an order to cite it for contempt. A copy of said order is annexed as Exhibit 7. A copy of Olsten's Release of Attachment is annexed as Exhibit 8.

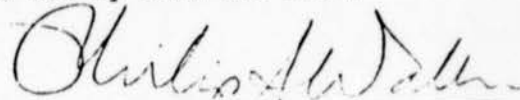
  
Constantine T. Zessos



STATE OF CONNECTICUT )  
                                  ) ss.       Hartford, May 23, 1973.  
COUNTY OF HARTFORD    )

On this 23rd day of May, 1973, before me, Philip S. Walker,  
the undersigned officer, personally appeared CONSTANTINE T. ZESSOS,  
known to me to be the person whose name is subscribed to the  
within instrument and acknowledged that he executed the same  
for the purposes therein contained.

In Witness Whereof I hereunto set my hand and seal.

  
\_\_\_\_\_  
Philip S. Walker  
Notary Public

W/ 7-14-30

April 18, 1969

Attorney Bob Helweil  
79 Wall Street  
New York, New York

Dear Bob:

I'm enclosing all my notes, scraps, etc. in hope that they'll be helpful to you in finishing my revised contract.

The points which Bill and I discussed and agreed upon are:

- A) To extend my agreement 6 more terms (35 years in all).
- B) Franchise fee not to exceed 6% or go below 4%.
- C) If I get sick (paragraph 2213), revert back to the minimum standards in the contract rather than 80% of the billing.
- D) Paragraph 22--extend to more than 60 days--in Connecticut it sometimes takes that long to get somebody.
- E) Handy Andy--Bill wanted an opening date put in, i.e., December 31, 1969. Actually we're opening New Haven in September.
- F) All terms that apply to Hartford should apply to New Haven except the minimum standards.
- G) Renewal--my thought to make it automatic, i.e., lack of notification on either part makes it automatic (through inference).

Bob, Bill mentioned to me that he wanted me to have every protection that has ever been afforded any franchisee, which we both agreed was an extremely fine gesture on his part.

Will call you soon.

Best Regards,

OLSTEN TEMPORARY SERVICES

Dean Zessos, President

DZ/bm  
Enc.

*4/21 4/21 to 11/10, 11/10 to 11/10*  
*4/21 to 11/10*

Ex. 1

HANDY-ANDY INTER-OFFICE MEMORANDUM

TO Mr. Dean Zessos

FROM Harry C. Graves

SUBJECT RECENT VISIT TO NEW HAVEN

DATE November 25, 1969

COPY TO R. Riedinger  
K. Baldwin  
J. Pangakis  
R. Leonard

Dear Dean:

I hardly know how to thank you and your entire force for the warm reception and cordiality extended to me during my recent visit to New Haven. You are doing a fine job in not only conducting to the best of your ability the manifold responsibilities incumbent upon your running a successful Handy Andy operation, but also in demonstrating unusual insight into the anticipated needs for the coming months. You have certainly earned warm compliments in my thoughts on your ability to gather around you sufficient personnel to perform the quality job expected of them in anticipating the fruition of the whole group in the coming months.

I would very strongly urge a sustained intensive sales effort on the part of Ray Leonard who, in my opinion, will become a strong cornerstone upon which to base your future plans. He has the making of a very fine Handy Andy salesman, and I believe that he will be able to guide your dispatcher, John, in acquiring the expert knowledge necessary to manage and smoothly run your interior operation. Also, I would most strongly urge that Jerry divide his time so that he will be able to spend a minimum of two weeks per month solely in pursuit of Handy Andy sales. This can be achieved in one or two ways, either by two successive weeks with Handy Andy and two successive weeks with Olsten, or every other week in a like endeavor. As we have discussed at length, adequate sales will solve almost any problem presented.

I sincerely believe that your goals should be as follows:

A minimum of fifteen productive calls per day and an absolute minimum of one new account per day derived from said calls not counting advertisements, newspaper advertising, and referrals. By all means, I would strongly stress second and third shift operations in addition to week end work because I believe that the New Haven industrial climate can sustain and support such business.

Miscellaneous constructive thoughts that I may be able to advance are as follows:

I believe you will agree with me that the electrical connection of your outside boom sign should be completed just as soon as possible. Also, a simple downstairs dispatch partition will prove to be of considerable help.

Along with the thoughts of obtaining another truck and the lettering of both as soon as possible, I would like to advance the idea of indoctrinating the various workers being transported to the job site that they should be able to get back to the office through their own efforts whenever such a move is feasible. It is bad enough right now with the limited number of workers that you have at your command to not only deliver but also to pick up these men without even entertaining the thoughts of continuing to do so as your number of workers dispatched daily increases. I am sure you will agree that this will create utter chaos when you are dispatching between fifty and a hundred men daily.

*the men could get here of their own.*

Ex. 2

HANDY-ANDY INTER-OFFICE MEMORANDUM

PAGE 2

TO Mr. Dean Zessos

DATE November 25, 1969

FROM

COPY TO

SUBJECT

A used shelf TV would be a decided advantage to you in New Haven in retaining the workers who report for assignment each day who are not successful in getting out immediately. The TV can be of tremendous benefit in retaining additional workers for a greater period of time before they leave the premises. In addition, the Christmas dinner idea has long been a favorite of mine, and I think you will agree the small cost involved on a strictly once a year basis will be greatly justified.

I believe you have already received a list from Cathy regarding recruitment possibilities. Also, you have received the tear sheet from Time Magazine that I promised to you.

Incidentally, during a conversation this morning with Mr. Riedinger, he once again brought up the subject of cooperative advertising for the coming year of 1970. We will discuss this next Monday, without fail.

I would strongly recommend that Ray pursue the idea of securing uniforms and a limited number of white coveralls to enhance the image of both your clients and Handy Andy in those situations where they might prove of great value.

I am sure that I have forgotten a good half dozen other thoughts; one that just came to my mind is to persuade Jerry to forward his requisition immediately for those supplies that we had discussed.

Again, best wishes for continued success in your operations for the next eight months. I am still looking forward with eager anticipation to the culmination of our goal of an average of 3,500 hours weekly by August 31, 1970.

Cordially yours,

Harry C. Graves  
General Manager

HCG:cc

P.S. My love bet with you still goes!

-315A-

HANDY-ANDY INTER-OFFICE MEMORANDUM

TO Mr. Harry Graves  
FROM John J. Sullivan  
Handy Andy Philadelphia #44  
SUBJECT New Haven Office Production

DATE October 21, 1969  
COPY TO Frank Toomey  
Dean Zessos  
Jerry Pangakis

Dear Mr. Graves:

On October 6, 1969, I arrived in the New Haven office. The office itself has a nice appearance and is well maintained. Mr. Raymond J. Leonard, the manager, and myself discussed sales exposure and recruitments and what to expect and look for as the office expands.

#### MARKET AREA

Tuesday morning I observed the other agencies and found that there are four other Labor services that are active. They are as follows: Kelly Labor Division, Man Power, Staff Builders, and Temporary Labor Corporation. The largest at this time, I would say, would be Man Power, followed closely by Temporary Labor and Kelly Labor. Temporary Labor seemed the most active. The largest account that Temporary Labor Corporation has is Aerosol, which uses quite a lot of women. Originally this was a Man Power account. Handy Andy, at present, is servicing a few women as a back up.

#### OFFICE PROCEDURES AND POLICIES

During the morning Mr. Dean Zessos, Jerry Pangakis, Ray Leonard and myself discussed the labor market, its future growth, and potential. All of us decided that transportation of men to assignments is very important. The need for another man was discussed and it was decided that in order for Ray to do a more effective job; on a broader scope, an additional man would be brought in to help in dispatcher customer contact, interviewing and help with the paper flow. Mr. Leonard will devote his time to major accounts that are large users of our type of service.

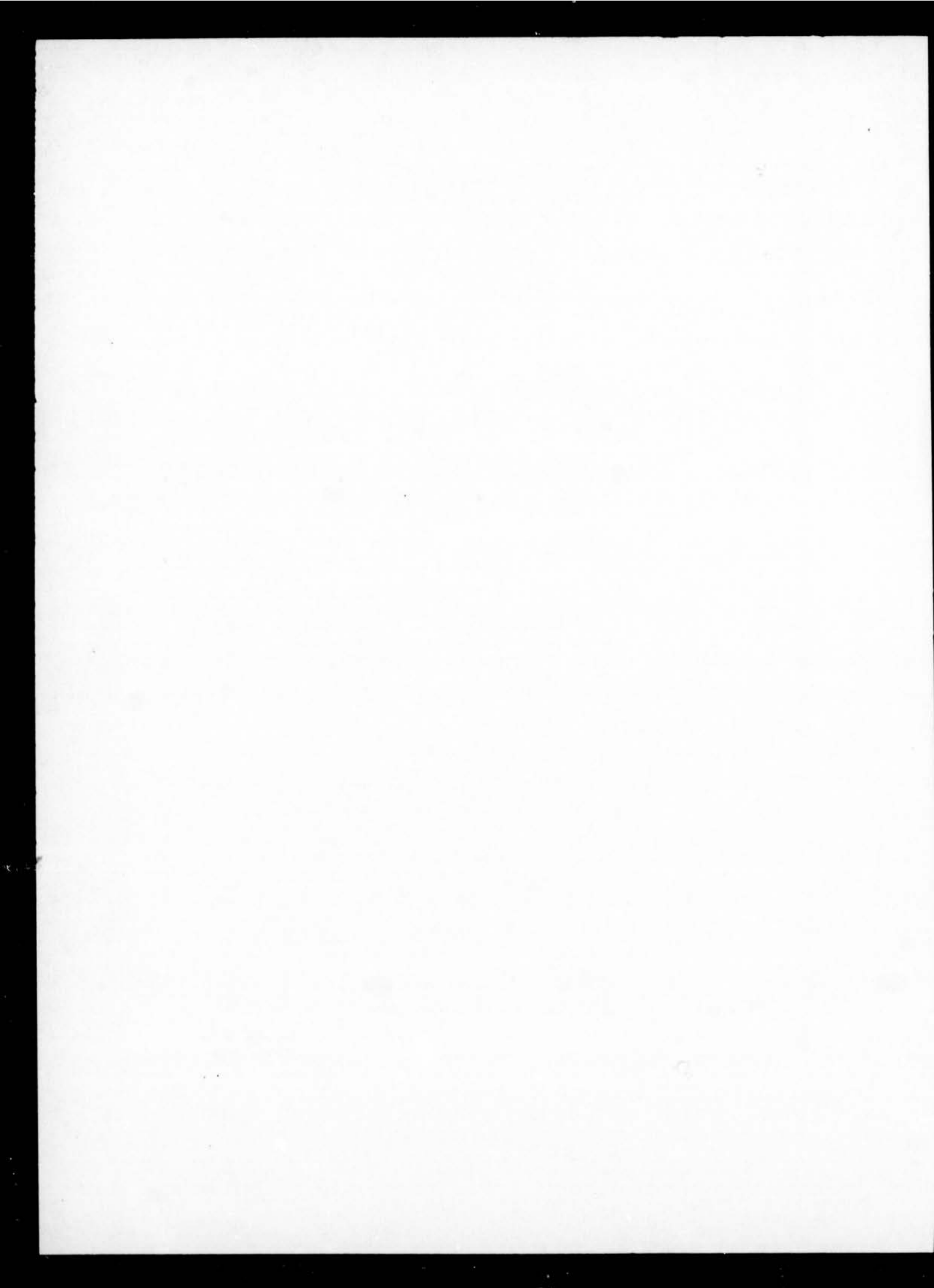
A black board sign for the window, explaining types of jobs and the amount of jobs available will be posted.

We also discussed and agreed that a separate dispatch and pay area would be built into the facility which will give the office complete separation, an area for the men and the other area for the growth for women.

#### SUMMARY

It is my opinion that New Haven will be a very successful labor market for Handy Andy. I appreciated working with Dean and Jerry.

*Low-cost operation "Jerry & Ray were running it for a day." Ex. 3*





I believe they are both very capable and competent men. The long hours they are presently working shows untapped energies and unlimited faith they have in wanting to make Handy Andy a service our competitors will soon have to reckon with. For the Olsten Corporation, Dean and Jerry bring the highest degree of business ability and that ability is of vital importance to us as a corporation.

Sincerely,

John J. Sullivan  
National Sales Manager

TO: Mr. William Olsten

DATE: March 9, 1971

FROM: H. M. Schuster

COPY TO:

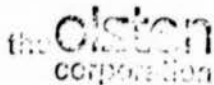
SUBJECT: Hartford-New Haven-Springfield

City	Manpower Figures		Blue Collar
	Gross Volume	Clerical	
Hartford	\$700M ('70)	75% 65%	27% 35%
New Haven	\$750M ('69) ✓	41% 55%	37% 45%
Springfield	\$550M ('69)	66%	34%

HMS:hl

OLSTEN INTER-OFFICE MEMORANDUM

Ex. 4



Merrick Avenue, Westbury, L. I., New York 11590, (516) 697-7200

April 8, 1971

Mr. Dean Zessos  
Olsten's of Hartford  
99 Pratt Street  
Hartford, Connecticut 06103

Dear Dean:

Unfortunately, I have not had an opportunity to answer your letter of March 5, 1971. Without further delay, I want to confirm the principal understandings we reached relating to your license agreement.

It is understood that your franchise fee will remain fixed and set at 5% for life. This means, even though your current license agreement by its terms, would, assuming the exercise of all options terminate October 29, 1985, it will automatically be extended beyond such date for the balance of your natural life. It is our intention that the various options be eliminated and there will be no need for renegotiations.

This letter is intended as an amendment to your license agreement dated September 17, 1965. You might indicate your agreement and approval by signing two copies of this letter enclosed herein and returning the same to me.

Sincerely,

THE OLSTEN CORPORATION

Alec R. Faberman  
President

ARF:so  
Enc.

AGREED TO:

E x 5

offices in principal cities in the United States and Canada

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

THE OLSTEN CORPORATION  
Plaintiff

V.

CONSTANTINE T. ZECCOS, A/K/A  
DEAN ZECCOS, CAPITAL  
TEMPORARIES OF HARTFORD, INC.  
CAPITAL TEMPORARIES OF NEW  
HAVEN, INC., THE SOUTHERN  
NEW ENGLAND TELEPHONE COMPANY  
Defendants

:

: CIVIL ACTION NO.

: NOVEMBER 30, 1971

: COMPLAINT

U.S. DISTRICT COURT  
HARTFORD, CT  
NOV 30 PM 1 71

COUNT I.

1. Plaintiff is a Delaware corporation, with its principal business office in Westbury, New York, and registered to do business in Connecticut. Olstens U.S.A., Inc., a New York corporation, incorporated September 6, 1960, was a wholly owned subsidiary of Plaintiff until July 30, 1971, when Plaintiff by merger succeeded Olstens U.S.A., Inc. and various other subsidiaries that merged into it and became the owner of all the rights and property of Olstens U.S.A., Inc.

2. The Defendant Constantine T. Zessos, a/k/a Dean Zessos is a citizen and resident of the State of Connecticut.

3. Capital Temporaries of Hartford, Inc. and Capital Temporaries of New Haven, Inc. are both Connecticut corporations having their principal places of business in Hartford, Connecticut and New Haven, Connecticut, respectively.

Ex 6

4. The Southern New England Telephone Company is a specially chartered Connecticut corporation with its principal place of business in New Haven, Connecticut.

5. The jurisdiction of this Court rests upon the amount of the controversy exceeding Ten Thousand (\$10,000) Dollars and the diversity of citizenship of the parties herein, and on the fact that this is a civil action arising under the Trademark laws of the United States 15 U.S.C., Sec. 1051 et. seq.

6. Plaintiff (and its predecessors) is and has been since 1950 engaged in the business of supplying temporary personnel to customers both through branch offices and, since 1962, through franchise offices, throughout the United States and Canada.

7. (a) In the year 1950, Plaintiff adopted and began to use the names "Olstens" and "Olsten" as a Trademark, Servicemark and Tradename for its services, and has continuously so used said names and is now so using them.

(b) Since 1950, Plaintiff has advertised and marketed its services under said Tradename, and said Trademarks and Servicemarks have appeared conspicuously in and on its advertising.

(c) Plaintiff owns the following Servicemarks registered with the United States Patent Office attached hereto as Exhibit

A - A8:

No. 697,224 Olstens with Clockface in O

No. 718,709 Clockface alone

No. 838,069 Clockface with figures

No. 852,466 Clockface with different figures

No. 865,931 Olsten in logoform

8. Said Tradename has been used by Plaintiff continuously and uninterruptedly in Connecticut, throughout the United States, and in Canada.

9. Because of the aforesaid continued and uninterrupted use of the Tradename "Olsten" throughout the aforesaid areas, said Tradename has acquired a meaning which relates and refers to Plaintiff alone.

10. The aforementioned names as a means of identification of services was new, novel and distinctive at the time of its adoption by Plaintiff in the territories where its services were offered and where said services were then and are now advertised. Said name has afforded and does afford to the public a means of ready identification of services and is well known to the public as identifying services of high quality and distinguishing them from services of others.

11. Plaintiff and its predecessors have, since its inception, spent large sums on advertising in all types of media under the name of Olsten and Olstens. In the year 1965, the name Olsten was well known nationally and recognized as being synonymous with quality service. Since 1965, Plaintiff has advertised its services under the name Olsten in the following national publications which are all widely circulated in Connecticut: (a) Business Week; (b) Newsweek; (c) Fortune; (d) Time; (e) Nations Business; (f) The Office; (g) The Secretary; (h) Personnel Journal; (i) Administrative Management; (j) Personnel Administrator; (k) Women's Day; (l) Cosmopolitan; (m) Dun's Review; and (n) Family Circle.



12. As a result of diligence, high standards and unique systems and techniques of marketing and merchandising, the Trade-mark, Servicemark and Tradename has afforded and does afford to the public ready identification of services supplied by the Plaintiff.

13. On September 17, 1965, Plaintiff's predecessor, Olstens, U.S.A., Inc., entered into a franchise agreement with Defendant Zessos, a copy of which is attached hereto as Exhibit A and made a part hereof as if hereinafter fully set forth. Said agreement was amended February 1, 1961 and in August, 1969. Copies of said amendments are attached hereto as Exhibits A-1 and A-2 and made a part hereof as if hereinafter fully set forth. Plaintiff, by the aforesaid merger, acquired the ownership of said agreement.

14. Said franchise agreement provides, among other things, that Defendant Zessos should have an exclusive license to use the trademark, servicemark and tradenames, "Olsten" and "Olstens, U.S.A. Inc." and various techniques and systems proprietary to Olstens in the Counties of Hartford and Middlesex, and, by rider attached thereto, New Haven County for a license charge of Six Thousand (\$6,000) Dollars for a term of five (5) years and six (6) weeks with an option to extend said agreement three (3) additional five (5) year terms.

15. By letter agreement dated September 11, 1970, a copy of which is attached hereto as Exhibit B and made a part hereof as if hereinafter fully set forth, Defendant Zessos exercised his option to extend the said license agreement for an additional term of five (5) years.

16. (a) Pursuant to Paragraph 23 of said license agreement, on or about October 1, 1965, the Defendant Zessos caused a corporation known as Olstens of Hartford County, Inc., to be organized and incorporated with offices at 99 Pratt Street, Hartford. In compliance with Paragraph 23 of said agreement, William Olsten, President of Olsten, was named as a Director of said franchise corporation. Upon information and belief, the Plaintiff alleges that Defendant Zessos is and was at all times the owner of and/or controlled all of the stock of said corporation and is and was the president and treasurer of said corporation.

(b) Pursuant to Paragraph 23 of said agreement, Defendant Zessos, on June 14, 1967, caused the corporation, Olstens of New Haven County, Inc. to be organized. In compliance with Paragraph 23 of said agreement, William Olsten, President of Olsten, was named a Director of said franchise corporation. Upon information and belief, the Plaintiff alleges that Defendant Zessos is and was at all times the owner of and/or controlled all of the stock of said corporation and is and was the president and treasurer of said corporation.

17. In October, 1965, Defendant Zessos, President of Olstens of Hartford County, Inc. and Olstens of New Haven County, Inc., opened offices at 99 Pratt Street, Hartford and subsequently at 900 Chapel Street, New Haven, and branch offices in East Hartford and Enfield, Connecticut, commenced advertising by radio announcement and through the newspapers that he was doing business

as an Olsten office and up to November 1, 1971, has carried on the business of supplying temporary personnel to customers from said offices under the name Olsten. As a franchisee, Zessos caused to be issued and maintained the following telephone numbers under the following published listings: Olsten Temporary Personnel, Hartford, 522-3203; Olsten Temporary Personnel, New Haven, 772-2325; Olsten Temporary Personnel, Enfield, 745-1900.

18. Sections 26 and 27 of one aforementioned license agreement provides:

"26. The LICENSEE acknowledges that he has seen the certificate of registration of the LICENSOR'S trademark and further that he has received information as to techniques and systems which he believes to be unique and of special value to the LICENSOR. Therefore, upon termination of this agreement for any reason, the LICENSEE shall continue the use of LICENSOR'S tradename and its trademark and shall either destroy or turn over to the LICENSOR any printed matter containing the tradename, trademark, techniques and systems of the LICENSOR. In addition, thereto, the LICENSEE shall refrain from entering into a similar business, directly or indirectly, in a radius of (a) One Hundred (100) miles from the area described above and (b) Fifty (50) miles from any office bearing the OLSTEN name and trademark, for a period of One (1) year from the year of such termination. Similar business shall include, the providing of personnel, whether temporary or permanent, with or without fee. In the event of the termination of this agreement, the LICENSEE shall at no time identify himself as being formerly affiliated in any manner or form with OLSTEN except with the written consent of the LICENSOR. The provisions of this paragraph are severable. Should any court deem any portion unreasonable, such court may shorten the distance or town so as to make the provision enforceable. In any instance the LICENSEE consents to injunctive relief without restricting the LICENSOR from demanding damages or any further and different relief as may be available." (Emphasis Added)

"27. At the termination of this agreement for any reason, the LICENSEE and LICENSOR agree to effectuate the transfer and transition as expeditiously and efficiently as possible, by executing any and all instruments, documents and papers as may be required. In addition, the LICENSEE shall deliver to the LICENSOR a complete list of customers together with the names and addresses

of such customers' representatives, all names and addresses of staff and temporary employees for the last one (1) year period prior to termination." (Emphasis Added)

19. On November 1, 1971, the Defendant Zessos, in breach of and contrary to the terms of said license agreement and without notice of any kind to the Plaintiff or written or oral consent of the Plaintiff:

(a) Announced by radio and newspaper advertisements that he, owner of the local Olsten franchise offices, was no longer affiliated with The Olsten Corporation and did change the name of his businesses to Capital Temporaries of Hartford, Inc. and Capital Temporaries of New Haven, Inc. and would continue his businesses at the same addresses with the same personnel;

(b) Caused, in violation of the laws of the State of Connecticut and in breach of the License Agreement, the names of the corporations, Olstens of Hartford County, Inc. and Olstens of New Haven County, Inc. to be changed to Capital Temporaries of Hartford, Inc. and Capital Temporaries of New Haven, Inc., without giving notice of intention to change said names to either Licensor or to William Olsten as a director of said Olstens of Hartford County, Inc. and Olstens of New Haven County, Inc.

(c) Expressly repudiated any further business affiliation, franchise or otherwise, whatsoever with Olsten;

(d) Caused the Olsten Temporary Personnel telephone number in Hartford (522-3203) to respond to calls directed to said number with the following recorded announcement, "Thank you for calling us. For the past six years we have been known to you as Olsten Temporary Personnel. However, we are no longer affiliated with The Olsten organization. Our new corporate name is Capital Temporaries at 278-1313. Our permanent internal staff under the supervision of Sue Codraro is still the same. They remain ready to fill your temporary personnel requirements, using the same high standards of quality and service that we have developed over the past years. So please call us at Capital Temporaries, 278-1313."

(e) Continued the New Haven Olsten Temporary Personnel telephone number (772-2325) and the Enfield telephone number (745-1900), which numbers had, at all times pertinent hereto, and are now identified by and with the public as "Olsten numbers", and received and is receiving all telephone calls to that number;

(f) Began and is now conducting the business of furnishing temporary personnel using the Olsten of Hartford and Olsten of New Haven employees and temporary employees and the Olsten of Hartford and Olsten of New Haven customer list, card files and telephone numbers;

(g) Has retained various documents, records, supplies and papers bearing the tradename Olsten(s);



22. Subsequent to the aforementioned actions of Defendant Zessos, and subsequent to November 1, 1971, Plaintiff opened an Olsten branch office operating under the Olsten name at 242 Trumbull Street in the City of Hartford in order to continue to conduct its business of supplying temporary personnel.

23. The temporary personnel business is a customer oriented enterprise, with one of its most effective and important means of obtaining customers being advertisements in the yellow pages of the appropriate telephone directories. The yellow pages of the Hartford telephone directory carries an advertisement for Olsten Temporary Personnel, listing the Hartford telephone number 522-3203, the East Hartford telephone number 528-7272, the Enfield telephone number 745-1900 and the New Haven telephone number 772,2325. The yellow pages of the New Haven telephone directory carries an advertisement for Olsten Temporary Services listing the telephone number 772-2325. Said telephone numbers appear on the cover of Plaintiff's annual report and on all mailing pieces distributed throughout the United States. The advertisement of said telephone numbers under the Olsten name is proprietary to Plaintiff and the use thereof by the Defendant is in breach of the aforementioned license agreement and constitutes an unlawful use of Plaintiff's tradename.

24. The use by Defendants of stationery and other documents bearing the name "Olsten", the use of applications made by temporary personnel who applied to and considered themselves Olsten



employees, deceives the public, Olsten customers and temporary employees of Olsten as well as others who may now or in the future have business relations with the Plaintiff. The use of said Tradenames by Defendants, and each of them, injures the reputation, good will and prestige of the Plaintiff and causes other injury to the Plaintiff. Unless the use of said Tradename by the Defendants, and each of them, is restrained, irreparable harm will be suffered by the Plaintiff in that:

(a) The names "Olsten" and "Olstens" has been commercially used as trade names by the Plaintiff for over twenty years;

(b) The Trade name(s), trademark(s), and service mark(s) of the Plaintiff has acquired, over the last twenty-one years, a secondary meaning among the general public in both the United States and Canada;

(c) The recognition factor of the aforementioned trade names and registered marks have been assiduously cultivated over the last twenty-one years by means of widespread advertisements in numerous national publications;

(d) The Plaintiff has developed over the past twenty-one years certain unique and distinctive merchandising and marketing methods;

(e) By constant diligence the name Olsten has become among the consuming public synonymous with quality service;

(f) The actions of the Defendants seriously threaten to destroy and denigrate the beneficial results involving to the

Plaintiff as a result of the previously enumerated business and marketing practices of the Plaintiff.

(g) If the Defendant's continue their present course of conduct, the trade name(s) and registered marks of the Plaintiff will be denigrated and will diminish in value to an immeasurable and unascertainable extent;

(h) As a result of the Defendant's conduct the Plaintiff has lost and will continue to lose substantial amounts of business which is, by its very nature, incapable of precise proof;

(i) If the Defendant's continue their present course of action the good will and reputation of the Plaintiff and the efforts of the last twenty-one years will be depreciated.

25. The use by Constantine T. Zessos, a/k/a Dean Zessos, Capital Temporaries of Hartford, Inc., and Capital Temporaries of New Haven, Inc. of telephone numbers listed in the white pages and listed and advertised in the yellow pages of the Hartford and New Haven telephone directories, neither of which will be revised or re-ossied until April or May, 1972, in the name of and/or identified with the registered servicemark, trademark and tradename of the Plaintiff:

(a) has already or will in the future, perpetrate an actual deception upon the general public, customers and employees of Olsten;

(b) has already caused confusion among the general public, customers and employees of Olsten;

(c) will in the future, unless prevented by this Court, cause confusion among the general public, customers and employees of Olsten.

26. Defendants, Constantine T. Zessos, a/k/a Dean Zessos, Capital Temporaries of Hartford, Inc., and Capital Temporaries of New Haven, Inc., knowing of the prior use of the aforementioned Trademarks, Servicemarks, and Tradename by the Plaintiff, have not and are not now using reasonable care to uphold the integrity of said Trademarks, Servicemarks and Tradenames and have not and are not now using reasonable care to prevent confusion among the general public, customers and employees of Olsten arising out of the use and/or misuse of the said Trademarks, Servicemarks and Tradenames.

27. The Defendants, Zessos, Capital Temporaries of Hartford, Inc. and Capital Temporaries of New Haven, Inc., since November 1, 1971, have wilfully, knowingly and intentionally used and continue to use the name "Olsten(s)" and Trademarks, Servicemarks, and Tradenames, belonging thereto all to the injury of the Plaintiff.

28. The Plaintiff has no adequate remedy at law and will, absent this Court granting injunctive relief, suffer irreparable damages.

WHEREFORE, Plaintiff prays against Defendants Constantine T. Zessos, a/k/a Dean Zessos, Capital Temporaries of Hartford, Inc. and Capital Temporaries of New Haven, Inc.:

1. That the Defendants Constantine T. Zessos, a/k/a Dean

Zessos, Capital Temporaries of Hartford, Inc. and Capital Temporaries of New Haven, Inc. and each of them their agents, servants and employees, be enjoined pendente lite and permanently from (A) using directly or indirectly and in any manner, the following telephone numbers listed in the name of Olsten:

- (a) 522-3203 in Hartford;
- (b) 528-7272 in East Hartford;
- (c) 745-1900 in Enfield; and
- (d) 772-2325 in New Haven, and

(B) be compelled to execute whatever documents may be necessary to authorize a transfer of said telephone numbers to Plaintiff, (C) that said Defendants be restrained from advertising or representing that any or all of them were in any way affiliated or connected with Olsten; (D) that said Defendants be restrained from continuing to use in any manner or form the Tradenames, Trademarks and/or Servicemarks registered by or belonging to the Olsten Corporation or its predecessors; (E) That said Defendants be compelled to turn over to the Olsten Corporation any and all printed or written matter, in any form whatsoever, containing the Tradename(s), Trademark(s), Servicemark(s) of The Olsten Corporation or any techniques and/or systems of The Olsten Corporation disclosed or utilized by said Defendants.

2. That judgment in favor of the Plaintiff and against the Defendants, and each of them, in the amount of Five Thousand (\$5,000) Dollars for each week, or any part thereof, that the

Defendants, Constantine T. Zessos, a/k/a Dean Zessos, Capital Temporaries of Hartford, Inc. and Capital Temporaries of New Haven, Inc. have used the aforementioned Trademarks, Servicemarks and/or Tradenames belonging to the Plaintiff.

3. That judgment in favor of the Plaintiff and against the Defendants, and each of them be entered in the amount of One Hundred Thousand (\$100,000) dollars as punitive damages for the wilfull, knowing and intentional use of the aforesaid Tradename.

4. That Defendants, Constantine T. Zessos, a/k/a Dean Zessos, Capital Temporaries of Hartford, Inc. and Capital Temporaries of New Haven, Inc. be compelled to deliver to Plaintiff each and every document, paper and object, including all application forms bearing the name Olsten, or any Trademark or Servicemark belonging to the Plaintiff.

5. That Plaintiff be awarded legal interest plus costs.

6. For such other appropriate relief as the Court may deem just and proper.

#### COUNT II.

1-28. Paragraphs 1-28 of COUNT I are incorporated herein, and made a part hereof, as if hereinafter fully set forth.

29. Defendant The Southern New England Telephone Company is and was at all times pertinent hereto licensed to, and did provide, telephone service at all of the aforementioned locations within the State of Connecticut.



30. On November 4, 1971, Defendant The Southern New England Telephone Company was advised that Defendant Constantine T. Zessos, a/k/a Dean Zessos, had terminated his franchise agreement with Plaintiff and that the use either directly or indirectly of the telephone numbers listed in the Olsten name was unlawful and constituted an unauthorized use and infringement of Plaintiff's registered Trademarks, Servicemarks and the Tradenames "Olsten(s)".

31. By subsequent letters dated November 17, 1971 and November 23, 1971, (Exhibits B' and C, attached hereto, and made a part hereof, as if hereinafter fully set forth), the Defendant The Southern New England Telephone Company was advised that it was by its inaction with respect to the aforementioned telephone numbers contributing to the denigration of Plaintiff's Trademarks, Servicemarks and Tradename and was contributing to the confusion being caused to the general public, customers and employees of Olstens.

32. The Defendant The Southern New England Telephone Company has been requested, but continues to refuse, to utilize an operator intercept to prevent confusion on behalf of those persons who attempt to communicate by telephone with Plaintiff.

33. The Defendant The Southern New England Telephone Company has by its inaction ratified the actions of the Defendants, Constantine T. Zessos, a/k/a Dean Zessos, Capital Temporaries of Hartford, Inc. and Capital Temporaries of New Haven, Inc. and by so doing has made those actions its own.

34. The Defendant The Southern New England Telephone Company by said ratification is misusing the Plaintiff's Trademarks,

-334-  
-16-



Servicemarks, and Tradename(s).

35. Said actions of The Southern New England Telephone Company are contributing to and enabling Defendant Constantine T. Zessos, a/k/a Dean Zessos, Capital Temporaries of Hartford, Inc. and Capital Temporaries of New Haven, Inc. to pass off its services as being those of the Plaintiff.

36. The Plaintiff has no adequate remedy at law and will, absent this court granting injunctive relief, suffer irreparable injury.

WHEREFORE, Plaintiff prays against Defendant The Southern New England Telephone Company:

1. That the Defendant, their agents, employees and servants be enjoined pendente lite and permanently from misusing, directly or indirectly, the Trademarks, Servicemarks and Tradename of the Plaintiff Olsten.

2. And to restrain The Southern New England Telephone Company pendente lite and permanently from allowing the use of said telephone numbers by Constantine T. Zessos, a/k/a Dean Zessos Capital Temporaries, Inc. of Hartford and/or Capital Temporaries, Inc. of New Haven for any purpose of reason.

3. That judgment in favor of the Plaintiff and against the Defendant be entered in the amount of Five Thousand (\$5,000) Dollars as compensatory damages for the unlawful use of said Tradename by the Defendant for each week after November 4, 1971, that Defendants have knowingly misused Plaintiff's Trademarks, Servicemarks and Tradename.

-335-  
-17-

4. That judgment in favor of the Plaintiff and against the Defendant be entered in the amount of One Hundred Thousand (\$100,000) Dollars as punitive damages for the wilfull, knowing and intentional misuse of the aforesaid Trademarks, Servicemarks and Tradename.

5. That Plaintiff be awarded legal interests plus costs.

6. For such other and further relief as the Court may deem just and appropriate.

PLAINTIFF  
THE OLSTEN CORPORATION

By

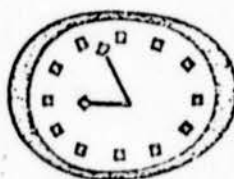
*Irving S. Ribicoff*  
IRVING S. RIBICOFF

*Louise H. Hunt*  
LOUISE H. HUNT

*Matthew J. Forstadt*  
MATTHEW J. FORSTADT  
ATTORNEYS FOR THE PLAINTIFF  
All of RIBICOFF & KOTKIN  
799 Main Street  
Hartford, Connecticut 06103

PRINCIPAL REGISTER  
Service Mark

Ser. No. 93,846, filed Mar. 28, 1960



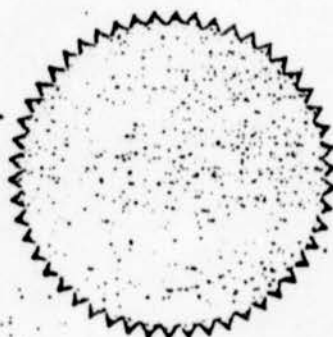
William Oisten  
147 W. 42nd St.  
New York 36, N.Y.

For: TEMPORARY OFFICE PERSONNEL SERVICES, SUCH AS STENOGRAPHIC, SECRETARIAL, AND CLERICAL, in CLASS 101.  
First use Feb. 22, 1960; in commerce Feb. 22, 1960.  
Owner of Reg. No. 697,224.

REGISTERED FOR A TERM OF 20 YEARS FROM July 18, 1961

Attest:

Certified to be a true copy of the registration issued by the United States Patent Office, which registration is in full force and effect.



OCT 12 1966

*D. J. Keat*  
Attesting Officer

*Edward J. Bremer*  
Commissioner of Patents

# United States Patent Office

697,224

Registered May 3, 1960

PRINCIPAL REGISTER

Service Mark

Ser. No. 70,159, filed Mar. 24, 1959



William Olsten  
147 W. 42nd St.  
New York 36, N.Y.

For: TEMPORARY OFFICE PERSONNEL SERVICES, SUCH AS STENOGRAPHIC, SECRETARIAL, AND CLERICAL, IN CLASS 101.  
First use Jan. 1, 1953; in commerce Mar. 1, 1953.

REGISTERED FOR A TERM OF 20 YEARS FROM May 3, 1960

And Sec. 8 Acpt.

Sec. 15 Affidavit filed on May 3, 1966

Attest:



OCT 12 1966

*D. J. Costant*  
Attesting Officer

Certified to be a true copy of the registration, which is in full force and effect, with notation of all effective notices taken thereon, excluding transfers, as disclosed by the records of the United States Patent Office.

*Edmund J. Bremer*  
Commissioner of Patents

PRINCIPAL REGISTER  
Service Mark

Ser. No. 240,112, Filed Mar. 3, 1966



William O'Brien  
152 W. 42nd St.  
New York, N.Y.

For: SUPPLYING TEMPORARY AND PERMANENT HELP OF ALL TYPES TO OTHERS, AND PERFORMING CONSULTATIVE AND STATISTICAL SERVICES BOTH AT APPLICANT'S PREMISES AND AT THE PREMISES OF CLIENTS, in CLASS 101.

First use on or about Oct. 1, 1965; in commerce on or about Oct. 1, 1965.

Order of Reg. No. 697,224 and 718,709.

J. BREEN, Examiner.



# United States Patent Office

852,466

Registered July 9, 1966

## PRINCIPAL REGISTER Service Mark

Ser. No. 260,577, filed Dec. 15, 1966



William Olsten  
152 W. 42nd St.  
New York, N.Y.

For: TEMPORARY PERSONNEL SERVICES, SUCH AS WHITE COLLAR, BLUE COLLAR, HOSTESSES, DEMONSTRATORS, TECHNICIANS, AND PROFESSIONALS; AND PERMANENT PLACEMENTS AS WELL AS EXECUTIVE SEARCH, in CLASS 101 (INT. CL. 35).

First use about July 1966; in commerce about July 1966.

Owner of Reg. Nos. 697,224 and 715,709.



# United States Patent Office

770,103  
Registered May 19, 1964

## PRINCIPAL REGISTER Service Mark

Ser. No. 166,093, filed Apr. 4, 1963

### HANDY-ANDY

Handy-Andy Labor, Inc. (New York corporation)  
203 W. 33rd St.  
New York 1, N.Y.

For: EMPLOYMENT SERVICES—NAMELY, FURNISHING TEMPORARY INDUSTRIAL HELP—in CLASS 101.

First use Dec. 5, 1962; in commerce Dec. 5, 1962.



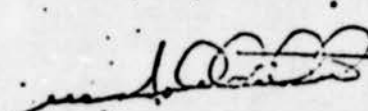
I **Hereby Certify** that the trade mark identified in the attached extract from the register of trade marks has been registered as appears therefrom, and that the said extract is a true copy of the record of its registration.

**Je certifie par les présentes** que la marque de commerce identifiée dans l'extrait ci-joint, tiré du registre des marques de commerce, a été enregistrée ainsi qu'il en appert, et que ledit extrait est une copie conforme de l'inscription de son enregistrement.

**In Testimony Whereof** I have hereunto set my hand and caused the seal of the Trade Marks Office to be affixed at the City of Ottawa, Canada, this sixteenth day of February, in the year of Our Lord one thousand nine hundred and sixty-eight.

**En foi de quoi** j'ai apposé aux présentes mon seing et fait apposer le sceau du Bureau des marques de commerce, en la cité d'Ottawa, ce

jour d  
en l'an de grâce mil neuf cent

  
M. Robitaille  
REGISTRAR OF TRADE MARKS  
LE REGISTRAIRE DES MARQUES DE COMMERCE

APPLICATION NO: 301,715.  
Filing Date: Dec. 27, 1956.

REGISTRATION NO: 155,603.  
Registration Date: Feb. 16, 1958.

Registrant: HANDY-ANDY LABOR, INC.,  
104 West 16th Street,  
New York City, New York,  
United States of America.

Trade Mark: HANDY-ANDY

Services: Employment services namely, furnishing  
temporary industrial help.

Agent for service: Smart & Biggar,  
70 Gloucester Street,  
Ottawa, Ontario.

Used in United States of America.

Registered in United States of America on May 19, 1954 under No. 770,103.



DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS  
MINISTÈRE DE LA CONSOMMATION ET DES CORPORATIONS


I **Hereby Certify** that the trade mark identified in the attached extract from the register of trade marks has been registered as appears therefrom, and that the said extract is a true copy of the record of its registration.

Je certifie par les présentes que la marque de commerce identifiée dans l'extrait ci-joint, tiré du registre des marques de commerce, a été enregistrée ainsi qu'il en appert, et que ledit extrait est une copie conforme de l'inscription de son enregistrement.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Trade Marks Office to be affixed at the City of Ottawa, Canada, this sixteenth day of March, in the year of Our Lord one thousand nine hundred and seventy.

En foi de quoi j'ai apposé aux présentes mon seing et fait apposer le sceau du Bureau des marques de commerce, en la cité d'Ottawa, ce

jour d  
en l'an de grâce mil neuf cent

  
M. Robitaille  
REGISTRAR OF TRADE MARKS  
LE REGISTRAIRE DES MARQUES DE COMMERCE

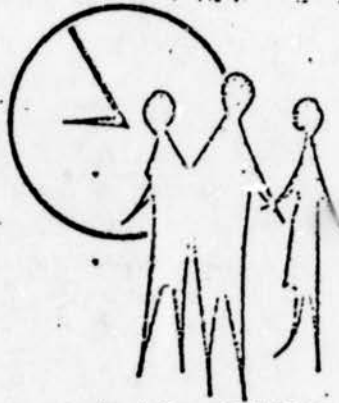
APPLICATION NO: 295,645.  
Filing Date: March 10, 1966.

REGISTRATION NO: 167,591.  
Registration Date: Jan. 30, 1970.

## Registrant:

THE CLSTEN CORPORATION,  
152 West 42nd Street,  
New York City, New York,  
United States of America.

## Trade Mark:



## Services:

White collar services namely the hiring of typists, stenographic, secretarial, bookkeeping and all other types of clerical skills; blue collar services namely the hiring of elevator operators, restaurant waiters, messengers and other types of semi-skilled labourers; the hiring of hostesses; the hiring of demonstrators and salesmen such as persons who might demonstrate cosmetics and other household wares; technicians namely factory personnel who generally perform bench services; the hiring of professional engineers, all the foregoing services either on a temporary or permanent basis; executive searches namely searches conducted by the registrant for executive personnel requested by the client; management services namely consultative and statistical both at franchisee's premises through the utilization of registrant's data processing equipment and also at the premises of the registrant's utilizing franchisee's equipment.

## Agent for service:

Smart & Bigger,  
70 Gloucester Street,  
Ottawa, Ontario.

Used in United States of America.

Registered in United States of America on July 9, 1963 under No. 352,466.



EXHIBIT B

November 17, 1971

Mr. John Lashnits  
Vice President and General Counsel  
Southern New England Telephone Company  
227 Church Street  
New Haven, Connecticut 06510

Re: The Olsten Corporation v. Zeasos et al

In reply please refer to our file #5636

Dear John,

Without withdrawing anything that I said in my letter of November 12, 1971, I do want to have you pass on to Mr. Gustafson of the Hartford office my compliments on the work of his secretary, Mr. Crombie (?), Mr. McKinney, Mrs. May and anybody else who may have been involved in overcoming some technical problems in getting the telephones installed for Olsten Temporary Personnel on Tuesday, November 16th, so that they can start business in their new office.

As you may be able to appreciate, the problem that we raised, which remains unresolved, now takes on a new dimension. There is a telephone number listed for Olsten Temporary Personnel which is intercepted by Capital Temporaries, which then acquires all the calls.

There now is a telephone listed legitimately in the name of Olsten Temporary Personnel, the company entitled to use the trade name and trade mark "Olsten".

A call earlier this afternoon to information requesting the Olsten telephone number first brought a reference to the old number which leads directly to Capital Temporaries. A second call this afternoon to information led to the in-



Mr. John Lashnits

-2-

November 17, 1971

formation that all Olsten Temporary Personnel numbers had been discontinued.

I am sure you recognize that this is an intolerable situation which must be corrected immediately.

Certainly with regard to the number for the legitimate Olsten Temporary Personnel, there can be no so-called "direct" rights in Capital Temporaries.

Sincerely,

Irving S. Ribicoff

ISR:gh

EXHIBIT C

November 23, 1971

Mr. John Lashnits  
Vice President and General Counsel  
Southern New England Telephone Company  
227 Church Street  
New Haven, Connecticut 06510

Re: The Olsten Corporation v. Zessos et al

In reply please refer to our file 45636

Dear John,

I do not like to be flip, but as I read your letter of November 16, 1971, in the light of my later conversation with Mr. Gustafson of your Hartford office to which this matter has been referred, my problem seems to be not that we are having an argument, but that there is some considerable question as to whether we and the Telephone Company are talking about the same thing.

We have finally gotten the Telephone Company to install a telephone for our client and, after some considerable effort and the cooperation of the staff, to have the information operator give to those persons requesting the Olsten telephone number the new number rather than the Capital Temporaries number.

This problem would seem, at least for the time being, to be solved.

With reference to your November 16, 1971 letter, we have never claimed any rights or ownership of the telephone numbers listed for Olsten Temporary Personnel in your various directories throughout the state.

November 1, 1971

To restate it again, our position has always been that, so long as the telephone directory lists a telephone number under the name "Olsten Temporary Personnel", any calls made to that number must be referred to the company or person that the caller seeks. All that we have ever asked is that, in view of the ambiguity which your company has helped to create, any calls made to the listed numbers for Olsten Temporary Personnel should be intercepted by an operator. An inquiry should be made of the caller as to whom the caller is seeking and the caller should then be directed either to the telephone number of Olsten Temporary Personnel or Capital Temporaries, as the case may be.

I have, as you know, stated that I believe that the Telephone Company is helping to perpetrate, to put it diplomatically, a state of confusion and a set of circumstances under which callers seeking our client, Olsten Temporary Personnel, are referred to a company which has expressly disclaimed any connection with Olsten Temporary Personnel not only in its newspaper advertisements but in the recorded message that is received by any caller who calls 522-3293. In addition, of course, there is the circumstance of people who call Olsten listed numbers in New Haven and Enfield and are directly connected with Capital Temporaries.

Your position, as expressed by those people to whom I have spoken, including Mr. Gustafson, is that in some way you have a contract with Mr. Zessos under which, so long as he pays the bill for the various numbers listed under the name Olsten Temporary Personnel in your directories, he is free to do what he wants with those numbers, including the interception of all calls made to Olsten, as well as to his company.

I, therefore, find your position most confusing when you state, as you did in your letter of November 16, 1971, "no subscriber ever acquires title to, or ownership of, any particular telephone number." How you reconcile this with the position of your company, I don't know. If Mr. Zessos has no title or ownership of those telephone numbers which he is using with your condonation and cooperation to intercept calls to Olsten Temporary Personnel, how, under your own theory, do you justify your failure to require him to change his numbers, so that a proper intercept can be made by your company.

The telephone company has a clear obligation, to all parties, to see to it that every subscriber gets all of, but only those, calls which are directed to him by the dialer.

November 24, 1971

I do not write this letter on the assumption that the Telephone Company is going to worry about the logic of the situation, since Mr. Gustafson has advised me this morning that the Company's position is now frozen with regard to the real issues involved. I mention this only because my last conversation with Mr. Gustafson, who was represented to me to be the decision maker, indicated that the question referred to him for decision was not the question I have been asking.

You may refer this matter to anybody you want to in your department. So far as I am concerned, I intend to dispose of it one way or another before you retire since I certainly would not deprive you of any pleasure, exquisite or otherwise.

Sincerely,

Irving S. Ribicoff

ISR:gh.  
cc. Mr. Gustafson

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

THE OLSTEN CORPORATION

Plaintiff

CIVIL ACTION NO.

V.

NOVEMBER 30, 1971

CONSTANTINE T. ZESSOS, a/k/a  
DEAN ZESSOS, CAPITAL  
TEMPORARIES OF HARTFORD, INC.  
CAPITAL TEMPORARIES OF NEW  
HAVEN, INC., THE SOUTHERN  
NEW ENGLAND TELEPHONE COMPANY  
Defendants

VERIFICATION

STATE OF CONNECTICUT )

) ss: Hartford

COUNTY OF HARTFORD )


ROBERT H. HELWEIL, being duly sworn, deposes and says:

He is the Assistant Secretary and General Counsel of The  
Olsten Corporation, the Plaintiff herein, and has been duly  
authorized to verify the foregoing complaint; that he has read the  
complaint and knows the contents thereof; that the same is true to  
his own knowledge except as to matters therein stated to be  
alleged on information and belief, and that as to those matters  
he believes them to be true.

 (L.S.)  
ROBERT H. HELWEIL



Sworn to and subscribed before me, Matthew J. Forstadt,  
personally, on the 30th day of November, 1971.

  
MATTHEW J. FORSTADT  
Commissioner of the Superior Court



NO. 173453

THE OLSTEN CORPORATION

VS.

CONSTANTINE T. ZESSOS, ET AL

SUPERIOR COURT

HARTFORD COUNTY

JANUARY 10, 1972

ORDER

The defendants, acting by their attorney, having appeared before the undersigned and having presented their motion asking that the plaintiff and Isaac Homelson be adjudged in contempt of court, and an order to cite said plaintiff and Isaac Homelson, and it appearing to the court that said motion and order ought to be granted.

IT IS HEREBY ORDERED that the plaintiff and Isaac Homelson be ordered to appear before the Superior Court to be holden at Hartford at 95 Washington Street, in and for the County of Hartford on the *18th* day of January, 1972, at *9:45* o'clock in the *forenoon*, at which time hearing on said motion is to be had.

BY THE COURT

*Walter J. Sileo*  
*Judge*

~~Clerk~~

Ex 7

THE OLSTEN CORPORATION	:	SUPERIOR COURT
v.	:	HARTFORD COUNTY
CONSTANTINE T. ZESSOS, ET AL.	:	JANUARY 14, 1972

RELEASE OF ATTACHMENT

This is to certify that a certain attachment of:

- 1) Six (5 x 7) file drawers with application cards;
- 2) Five Roladex and cards;
- 3) Two IBM register books with billing information;
- 4) Full drawers of copies of invoices boxed separately; and
- 5) Three (4 drawer) file cabinets with applications.

In the above entitled action, which attachment was made at the premises of the Defendants and of goods claimed by the Defendants to belong to them, is hereby released.

PLAINTIFF  
THE OLSTEN CORPORATION

By *Belmont & Kotkin*  
RIBICOFF AND KOTKIN  
Its Attorneys

Ex. 8

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CAPITAL TEMPORARIES OF  
HARTFORD, INC. ET AL

:

CIVIL ACTION NO. 14749

VS.

:

THE OLSTEN CORPORATION

:

JUNE 18, 1973

AFFIDAVIT IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT

William Olsten being duly sworn deposes and says:

1. That I am over 21 years of age and believe in the obligation of an oath.
2. That this affidavit is made on my personal knowledge.
3. That I am the Chairman of the Board and Chief Executive Officer of The Olsten Corporation, the defendant in the above entitled action.
4. That at no time during negotiations between Constantine T. Zessos and this deponent did Mr. Zessos ever request that we delete from our license agreement the right to open a Handy Andy office. All of the negotiations were basically for the typical white collar franchise. The right to open a Handy Andy office was accepted happily by Mr. Zessos as an extra benefit.
5. That prior to the amendment of August, 1969 Mr. Zessos did request certain additional benefits, which were incorporated in such amendment. I at no time advised Mr. Zessos, as he states in paragraph 12 of his affidavit "it was in my contract", that he open a Handy Andy office. Mr. Zessos advised me that his attorney wanted a cut-off date for his option to open a Handy Andy office, and thus the agreed upon date in which he had to exercise such right or

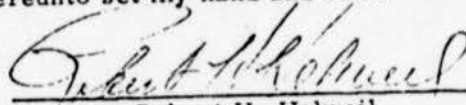
option was set at December 31, 1969.

  
William Olsten

STATE OF NEW YORK )  
                              : SS:  
COUNTY OF NASSAU )

On this 18th day of June, 1973, before me, Robert H. Helweil,  
the undersigned officer, personally appeared WILLIAM OLSTEN,  
known to me to be the person whose name is subscribed to the  
within instrument and acknowledged that he executed the same for  
the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and seal.

  
Robert H. Helweil  
Notary Public

ROBERT H. HELWEIL  
Notary Public, State of New York  
No. 20-1750550-0 Expires March 20, 1975

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CAPITAL TEMPORARIES OF  
HARTFORD, INC., et al.

:

Civil Action No. 14749

v.

:

THE OLSTEN CORPORATION.

:

JUNE 18, 1973

AFFIDAVIT IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT

ROBERT H. HELWEIL, being duly sworn deposes and says:

1. He is over the age of twenty-one and believes in the obligations of an oath;

2. He is Assistant Secretary and General Counsel of The Olsten Corporation;

3. He has personal knowledge of the facts contained herein, except as otherwise stated;

4. He prepared the License Agreement dated the 17th day of September, 1965. At no time was he requested by anyone to delete the reference to a right to open Handy Andy. Upon information and belief there were no negotiations regarding Handy Andy since the right to it was given gratis.

  
Robert H. Helweil

STATE OF NEW YORK )

SS.:

COUNTY OF NEW YORK)

Personally appeared before me ROBERT H. HELWEIL, known to me and to me known who has sworn to the truth of the averments contained herein.

  
Notary Public

ALAN E. BROWN  
Notary Public, State of New York  
Exp. 12/31/74  
County of New York  
Commission Expires March 30, 1975



Oct 11 4 31 PM '73

U.S. DISTRICT COURT  
HARTFORD, CONN.

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

CAPITAL TEMPORARIES, INC. :  
OF HARTFORD, :  
CAPITAL TEMPORARIES, INC. :  
OF NEW HAVEN, and :  
CONSTANTINE T. ZECCOS :  
  
v. : CIVIL NO. 14,749  
  
THE OLSTEN CORPORATION :

RULING ON CROSS MOTIONS FOR SUPPLEMENTARY JUDGMENT  
ON COUNT FIVE OF PLAINTIFFS' COMPLAINT

On September 17, 1965, Constantine T. Zeccos (Zeccos) entered into a franchise agreement with the Olsten Corporation (Olsten), which licenses employment service businesses to operate under its trademark throughout the United States and Canada. Pursuant to this contract,<sup>1/</sup> Zeccos was permitted to use the Olsten trademark and received supplies and instruction in conducting the operation of a "white-collar" (largely secretarial) employment service; in return he agreed to pay \$6,000 plus five per cent of his gross billing as franchise fees to the defendant. The agreement gave Zeccos the right

<sup>1/</sup>  
This document is Exhibit A, and is attached to the amended complaint.



to open an Olsten's office in Hartford and Middlesex counties;<sup>2/</sup> a "Rider" signed the same day gave him the right to operate in New Haven as well, provided he opened an Olsten's office there within eighteen months of the first billing made by the Hartford operation.<sup>3/</sup>

In addition, Paragraph 2 of the agreement provided:

"The grant of the license hereunder includes the right of the LICENSEE to use the trade mark and name HANDY ANDY LABOR. All 'blue collar' personnel shall be supplied by a division of the LICENSEE designated as HANDY ANDY LABOR commencing six (6) months from the date hereof. For the purposes of standards and rate of franchise fee, the total of all billings from whatever source shall be included.

The division shall be known as HANDY ANDY LABOR, a division of OLSTEN'S OF GREATER HARTFORD, INC. At the option of the LICENSEE, such division may be operated as a separate corporate entity. In such event, it shall be designated as HANDY ANDY LABOR OF GREATER HARTFORD, INC. In either event, separate bookkeeping shall be kept for the 'blue collar' division. In the event the LICENSEE incorporates, all of the provisions as set forth in paragraph 23 shall apply."

The Rider makes no mention whatever about Handy Andy operations in New Haven.

Zessos claims that under the contract he was compelled to open a blue-collar Handy Andy employment service in order

<sup>2/</sup>

It is undisputed that Zessos never conducted any operations in Middlesex County.

<sup>3/</sup>

If he failed to meet this deadline, the agreement provided that \$2,500 of the initial franchise fee would be returned to him.

to receive the Olsten's white-collar franchise he desired.<sup>4/</sup> He asserts that Olsten, in yoking the two operations and refusing him the choice of taking the one he wanted by itself, enforced a tying arrangement (tie-in) unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1.<sup>5/</sup> The defendant denies that either its conduct or the contract itself obligated or

4/

Zessos operated a Handy Andy in New Haven from September, 1969 until December, 1970. Olsten Aff., paras. 38-39.

5/

15 U.S.C. § 1 provides:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: Provided, That nothing contained in sections 1 to 7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: Provided further, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or

compelled Zessos to operate a Handy Andy. In other words, Olsten argues that while Zessos was afforded the opportunity to operate the blue-collar agency if he chose to do so, he was required only to run the Olsten's office and pay the franchise fees. Both parties have moved for summary judgment on their claims.<sup>6/</sup> Fed. R. Civ. P. 56. Before examining their conflicting contentions as to the construction of the contract and its attendant circumstances, it is appropriate to review the antitrust principles pertinent to the dispute.

I.

The Law Concerning Tie-ins

Under the Sherman Act, certain business practices are considered so blatantly at odds with the statute's policy of furthering competition that they are considered per se

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between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1 to 7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

<sup>6/</sup> This antitrust claim is but one count in this bitter litigation. The amended complaint also alleges causes of action for breaches of contract and warranty, unfair competition and abuse of process.

unreasonable<sup>7/</sup> and therefore "illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." Northern Pac. R. Co. v. United States, 356 U.S. 1, 5 (1958). Included on this roll of condemned practices are price fixing, group boycotts, market division and, if certain prerequisites are met, tying arrangements. Id. at 5. This practice "may be defined as an agreement by a party to sell one product but only on the condition that the buyer also purchases a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier."<sup>8/</sup> Id. at 5-6. Since "[t]ying arrangements serve hardly any purpose beyond the suppression of competition," Standard Oil Co. of California v. United States, 337 U.S. 293, 305-06 (1949), they "fare hardly under the laws forbidding restraints of trade." Times-Picayune Pub. Co. v. United States, 345 U.S. 594, 605 (1953).

For a tie-in to fall under the per se prohibition of the Sherman Act, "the seller must have 'sufficient economic

<sup>7/</sup> Despite the Act's sweeping language, note 5, *supra*, it was interpreted early in its history to prohibit only "unreasonable" restraints of trade. See Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911).

<sup>8/</sup> The Court added a footnote at this point which is relevant to the present case:

"Of course where the buyer is free to take either product by itself there is no tying problem even though the seller may also offer the two items as a unit at a single price."  
356 U.S. 1, 6 n.4.



power with respect to the tying product to appreciably restrain free competition in the market for the tied product . . . ." United States v. Loew's, Inc., 371 U.S. 38, 45 (1962), quoting Northern Pac. R. Co. v. United States, supra, 356 U.S. at 6. In addition, "a 'not insubstantial' amount of interstate commerce [must be] affected." Northern Pac. R. Co. v. United States, supra, 356 U.S. at 6. See also Fortner Enterprises v. United States Steel Corp., 394 U.S. 495, 501-04 (1969).

A. The Requirement of Economic Power

While some commentators have suggested that the Supreme Court has implicitly abandoned the requirement of economic power, see The Supreme Court, 1968 Term, 83 Harv. L. Rev. 7, 235 (1969), that proposition is not supported by case law. Rather, the Court has made the test progressively more easy to satisfy--compare Times-Picayune Pub. Co. v. United States, supra, with Fortner Enterprises v. United States Steel Corp., supra--and in certain circumstances permits the requisite economic power to be presumed. Foremost among the circumstances creating the presumption is when a barrier to competition is posed by the law, as when a product is protected by patent or copyright. See Fortner Enterprises v. United States Steel Corp., supra, 394 U.S. at 505 n.2; United States v. Loew's, Inc., supra, 371 U.S. at 45. Soon after the Loew's case, this Circuit included a trademark or franchise license within the category of tying products.

Susser v. Carvel Corp., 332 F.2d 505 (2d Cir. 1964), cert. granted, 379 U.S. 835 (1964), cert. dismissed, 381 U.S. 125 (1965). But the majority in Susser refused to hold that the requisite economic power could be presumed from the existence of the trademark. See 332 F.2d at 519. They applied a "market dominance" standard in finding that the defendant in Susser lacked the requisite power; by rejecting that standard in Fortner Enterprises v. United States Steel Corp., supra, 394 U.S. at 502-06, the Supreme Court vindicated Chief Judge Lumbard's dissenting opinion in Susser. See 332 F.2d at 513.<sup>9/</sup>

It must be emphasized that Fortner does not hold that the mere existence of economic power in a seller is enough to meet the first criterion needed to establish the illegality of a tie-in. The economic power must not simply exist; it must be used. "[T]here can be no illegal tie unless unlawful coercion by the seller influences the buyer's choice."

Amer. Mfrs. Mut. Ins. Co. v. Amer. B-P Theatres, 446 F.2d 1131, 1137 (2d Cir. 1971), cert. denied 404 U.S. 1063 (1972). See also, Belliston v. Texaco, Inc., 455 F.2d 175, 183-84 (10th Cir. 1972), cert. denied 403 U.S. 928 (1972); Abercrombie v. Lun's Inc., 345 F.Supp. 327, 391 (S.D. Fla. 1972).

<sup>9/</sup>  
For a similar analysis of the impact of Fortner on the continued vitality of this aspect of Susser, see Siguel v. Chicken Delight, Inc., 448 F.2d 43, 50 n.7 (9th Cir. 1971), cert. denied 405 U.S. 955 (1972).



B. Impact on Interstate Commerce

As it has eased plaintiff's burden of proving the seller's market power, so has the Supreme Court liberalized its view of what proof will satisfy the requirement of a "not insubstantial" burden on the affected interstate commerce. In Fortner the Court sharply curtailed the market-share analysis that had been used by several lower courts, and stated that "normally the controlling consideration is simply whether a total amount of business, substantial enough in terms of dollar-volume so as not to be merely de minimis, is foreclosed to competitors by the tie." 394 U.S. at 501. It emphasized the role of the private antitrust plaintiff in "vindicat[ing] the important public interest in free competition," and thus refocused inquiry on the total impact of the practice under attack. "The relevant figure is the total volume of sales tied by the sales policy under challenge," not the plaintiff's portion of that total. 394 U.S. at 502. However, the Court's relaxation of a plaintiff's burden of proof on this point has not dispensed with the need for him to make some showing that the defendant's acts have in fact had some effect on interstate commerce.

II.

Plaintiff's Motion for Summary Judgment

It is apparent from the foregoing review of tie-in doctrine that the plaintiff is contending for a novel

extension of its reach. In defining the evil proscribed, all the cases talk about the power of sellers to force buyers to purchase products they might choose not to obtain from the seller if the tying arrangement did not obstruct free competition. See generally Note, The Logic of Foreclosure, 79 Yale L. J. 85 (1969). This action does not present that situation.

Unlike the plaintiffs in Susser v. Carvel Corp., supra, who were required to buy flavoring, topping and cones along with the franchise name, or the franchisees in Siegel v. Chicken Delight, supra, who had to buy spices, cooking equipment and packaging supplies from the defendant, Zessos was not constrained to pay Olsten any money whatever for the Handy Andy license. As appears from the plain language of the contract (para. 2), he simply received the right to use the Handy Andy trademark along with the Olsten name. The defendant earned no income from that grant; thus defendant did not, in any normal sense of the word, "sell" plaintiff rights to use the Handy Andy trademark.<sup>10/</sup>

Neither was the Handy Andy license a product in the sense usual to tie-in cases. Generally the tying and tied

<sup>10/</sup>

Plaintiff argues that the defendant had a financial interest in his entrance into the blue-collar field, because its franchise fees were based upon plaintiff's gross billings. Thus defendant stood to make money even from operations such as the New Haven Handy Andy which incurred net operating losses. This simple truism does nothing to establish the existence of a tying arrangement. If it did, nearly all franchise agreements would be held to violate the antitrust laws.

products are jointly necessary or useful to the buyer or his business, or are similar in character. Here there was no necessary connection between the two; Zessos did not need the right to use the Handy Andy license in order to operate the Olsten's employment service. Moreover, Handy Andy was an entirely separate business,<sup>11/</sup> operating in a completely different market.

Thus it would seem that even assuming arguendo that the licensing agreement compelled Zessos to open a Handy Andy, a long conceptual leap would be needed to analogize that obligation to a traditional tie-in. However, a ruling on plaintiff's motion does not require consideration whether such a leap would be consistent with existing tie-in law, or whether it would be justified in this case. The principles enunciated in Amer. Mfrs. Mut. Ins. Co. v. Amer. B-P Theatres, supra, command that the motion be denied. The record is utterly devoid of evidence that Zessos was in any way coerced or compelled to open a Handy Andy office. To state the crucial point another way, there is no indication whatever that Zessos attempted to free himself from the supposed burden of having to open a Handy Andy office, or that he bargained with Olsten for a white-collar franchise alone.

In his affidavit, Zessos stated:

"9. That my attorney pointed out that I had not opened a Handy Andy office in accordance with the terms of the agreement

<sup>11/</sup>

Paragraph 2 of the contract required the plaintiff to maintain separate bookkeeping for each operation.

and suggested that I obtain a waiver of my failure to comply in this regard.

10. That I thereafter discussed my agreement with William Olsten, the defendant's President, who initially agreed that I could open a Handy Andy office at a time of my selection without an initial license fee.

11. That thereafter Mr. Olsten changed his position and insisted that a definite deadline for opening a Handy Andy office be inserted into the August 1969 amendment to the agreement of September 17, 1965. This date was December 31, 1969. (See Exhibit 3 to defendant's Brief: 'Handy Andy--Bill wants me to open no later than December 31, 1969' and my April 18, 1969 letter annexed as Exhibit 1, hereto).

12. That although I did not for business reasons want to open a Handy Andy office during the time period 1968-1969, I was told by Mr. Olsten that I must do so because 'it was in my contract' and was further promised that the Olsten organization would give full support to such an office."

It is clear that this controversy between the parties was over a question of time--the deadline to be imposed on Zessos' chance to begin Handy Andy operations. It had nothing to do with any supposed condition imposed by Olsten that he must enter the blue-collar field.<sup>12/</sup> Thus even if

12/

Any suggestion that this correspondence represented the exercise of compulsion by the defendant is belied by contemporaneous notes in Zessos' own handwriting, found in Exhibits 2 and 3. In May of 1968, Zessos received a letter from his attorney, which stated, inter alia,

"2. Handy Andy Labor should have commenced in March of 1966. You should extend the date or have it eliminated. The agreement should also provide that no additional license fee is to be charged for Handy Andy."

Just below this printed paragraph is a note in Zessos' hand: "Bill & I have gentlemen's agreement--no fee--no time limit." Attached to a copy of this letter (Exh. 2) are two pages of Zessos' handwritten notes (Exh. 3), which apparently were



the facts relating to this issue are disputed, they are not material to the question of whether Olsten exercised economic power to force Zessos to begin operations; the dispute is merely about who included the time limit on his entrance into the blue-collar field in the 1969 negotiations. A reasonable time limitation on an opportunity previously extended cannot be translated into an exercise of economic power; there is no requirement that an offer remain open perpetually under peril of the antitrust laws.

I conclude from the evidence presented by both parties in the form of affidavits and depositions that it is beyond factual dispute that the defendant never exerted any economic pressure to compel the plaintiff to operate a blue-collar employment service franchise. I find, to the contrary, that the only dealings between the parties on the subject of Handy Andy came at the behest of the plaintiff, who sought an extension of time in which to begin such operations. To

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sent, along with the letter, to defendant's General Counsel in New York. (See Helweil aff., para. 5) After writing again the above-quoted sentence which appears on the face of the letter, Zessos wrote:

"However, now that we're going public, please put it into contract. I'm certainly going to open another Olsten office everywhere I can.  
--Open Handy Andy & these office at my option.  
--Dec. 31, 1969."

Since on a motion for summary judgment the movant has "the burden of showing the absence of a genuine issue as to any material fact, and for these purposes the material it lodged must be viewed in the light most favorable to the opposing party," Adelman v. S. H. Weiss Co., 398 U.S. 144, 157 (1970), Zessos' affidavit cannot be regarded as establishing coercion by the defendant.

prevail in his motion for summary judgment, Zessos must establish that Olsten exploited its economic power to compel him, contrary to his wishes, to open a Handy Andy office. American Mfrs. Mut. Ins. Co. v. Amer. B-P Theatres, *supra*. Since the record is barren of evidence to support such a finding, the plaintiff's motion for summary judgment must be, and is hereby, denied.

### III.

The Supreme Court has repeatedly made clear that summary judgment motions dismissing antitrust claims are not generally to be granted. Fortner Enterprises v. United States Steel Corp., *supra*, 394 U.S. at 500, 505 [citing Poller v. Columbia Broadcasting System, 368 U.S. 464, 473 (1962)]. However, this generally unfavorable attitude is not a blanket proscription, and does not preclude the granting of such a motion when it is plain that the allegedly unlawful practice simply does not exist, and that plaintiff's claim is without merit. Cf. Goosby v. Osser, \_\_\_ U.S. \_\_\_, 35 L.Ed.2d 36 (1973). This case presents such a situation.

The key provision of the contract, Paragraph 2, see p. 2, *supra*, simply granted the plaintiff the right to use the Handy Andy trademark. The Rider to the agreement, permitting Zessos to operate in New Haven, does not mention Handy Andy at all. Yet it was in New Haven that he opened his short-lived blue-collar operation; he never attempted to conduct that business in Hartford.<sup>13/</sup> The only condition the

<sup>13/</sup>  
Zessos' Deposition, p. 19.



contract imposed on Zessos was to forbid him to open a Handy Andy less than six months after the inception of the white-collar operation. Defendant explains this prohibition as a safeguard to prevent a "fledgling franchisee" from plunging into business too deeply without enough experience.<sup>14/</sup> In view of the need of a corporation with nation-wide interests to protect its business reputation, this is certainly a credible explanation. As discussed earlier, plaintiff was informed by his attorney early in 1968 that the six months had long since passed,<sup>15/</sup> yet he did not actually open a Handy Andy office until another year and a half went by, or almost exactly four years from the date he purchased the Olsten franchise. Neither the contract nor the relations between the parties revealed in the documents accompanying their motions suggests that the defendant pressured Zessos to begin the Handy Andy operation. What emerges from the evidence is a picture of a businessman who waited until he thought, mistakenly, that the right time had come for him to venture into a new field. There is nothing before the court to suggest that the defendant ever insisted, or plaintiff ever considered, that the operation of the white-collar franchises was dependent

<sup>14/</sup>

The plaintiff admitted that he had no previous experience in the employment service industry. Zessos' Deposition, p. 13.

<sup>15/</sup>

It is not readily apparent why Zessos and his then attorney interpreted the six months' limitation as a deadline. The plain language of the provision supports the statement of defendant's president that he did not so regard it. Olsten's Affidavit, paras. 33-36.

upon his entrance into the blue-collar market. Rather, the conclusion is unavoidable that, throughout the history of his relationship with the defendant, the plaintiff considered the blue-collar business "just another area that we could earn quite a bit of income, an area that the Olsten organization was expanding into."<sup>16/</sup>

I find, therefore, that the white-collar and blue-collar franchises were entirely separate operations; that the plaintiff was never compelled to operate the latter in order to obtain the former; that he received the right to use the Handy Andy trademark along with his purchase of the Olsten franchise without payment of additional consideration. Construing as a matter of law the plain language of the contract, see Nat'l. Utility Service, Inc. v. Whirlpool Corp., 325 F.2d 779, 781 (2d Cir. 1963), I hold that Zessos was in no way obligated to enter the blue-collar industry and that his only obligation under the contract was to fulfill its conditions with respect to the Olsten's white-collar franchise.

In light of these findings of fact and conclusions of law, I hold that there existed no tie-in between the white-collar and blue-collar franchises. No genuine issue of material fact precludes this conclusion of law; the matter is therefore properly subject to adjudication on motion for summary judgment. Fed. R. Civ. P. 56(c). The plaintiff's

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<sup>16/</sup> Zessos' Deposition, p. 25.

motion for summary judgment is denied; defendant's motion for summary judgment on the fifth count is granted. Judgment will enter dismissing the fifth count of the complaint.

SO ORDERED.

Dated at Hartford, Connecticut, this 10<sup>th</sup> day of October, 1973.

M. Joseph Blumenfeld

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M. Joseph Blumenfeld  
Chief Judge

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

FILED  
OCT 15 1973  
U.S. DISTRICT COURT  
NEW HAVEN, CT

CAPITAL TEMPORARIES, INC. OF HARTFORD;  
CAPITAL TEMPORARIES, INC. OF NEW HAVEN and  
CONSTANTINE T. ZISSOS

v.

THE OLSTEN CORPORATION

CIVIL NO.  
14,749

PARTIAL SUMMARY JUDGMENT

This cause having come on for consideration on cross motions for summary judgment on Count Five of the plaintiffs' complaint, and the Court having rendered its Ruling on Cross Motions for Summary Judgment on Count Five of Plaintiffs' Complaint, Findings of Fact and Conclusions of Law under date of October 11, 1973, denying plaintiffs' motion for summary judgment and granting defendant's motion for summary judgment on Count Five of the Complaint,

It is ORDERED and ADJUDGED that partial summary judgment be and is hereby entered dismissing Count Five of the Complaint.

Dated at New Haven, Connecticut, this 15th day of October, 1973.

SYLVESTER A. MARKOWSKI  
CLERK, UNITED STATES DISTRICT COURT

By

*[Signature]*  
Deputy In Charge

FILED

OCT 25 4 44 PM '73

CLERK  
U.S. DISTRICT COURT  
DISTRICT OF CONNECTICUT  
COURT, CONN.

CAPITAL TEMPORARIES, INC.  
OF HARTFORD, ET AL,

Plaintiffs

VS.

THE OLSTEN CORPORATION,

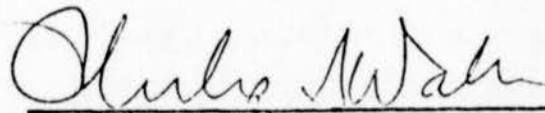
Defendant

CIVIL ACTION NO. 14,749

OCTOBER 25, 1973

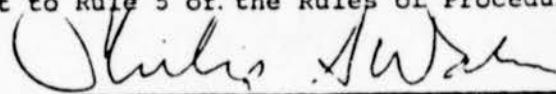
MOTION TO ALTER OR AMEND JUDGMENT

Pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, the plaintiffs respectfully move that the judgment entered on the 15th day of October, 1973 dismissing Count 5 of the Complaint be altered or amended to include a statement pursuant to Title 28 U.S.C. § 1292(b) that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.



Philip S. Walker  
Attorney for Plaintiffs  
Day, Berry & Howard  
One Constitution Plaza  
Hartford, Connecticut 06103

I, PHILIP S. WALKER, do hereby certify that a copy of the foregoing Motion to Alter or Amend Judgment was mailed this date to Irving S. Ribicoff, Esq. and Matthew J. Forstadt, Esq., of the firm of Ribicoff and Kotkin, 799 Main Street, Hartford, Connecticut 06103, pursuant to Rule 5 of the Rules of Procedure of this Court.



Philip S. Walker



DEC 4 3 47 PM '73

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CAPITAL TECHNOLOGIES, INC. (V) :  
PATRICK J. O'NEILL, :  
INC. (V) :  
CONSTANTINE T. DIMITROU :  
v. : CIVIL NO. 14,740  
THE OLSEN CORPORATION :

SUPPLEMENTAL MEMORANDUM

The plaintiff has moved for an order which will amend the prior decision of this Court dated October 15, 1973, granting summary judgment dismissing Count Five of the complaint to include a statement pursuant to 28 U.S.C. § 1292(b). The judgment involves a controlling question of law as to which there is substantial ground for difference of opinion and an immediate appeal from the order may materially advance the ultimate determination of the litigation. No stay of proceedings is sought. The dismissed count asserts a separate and distinct claim from the others in the complaint and, therefore, an immediate appeal from the judgment dismissing it falls within the limited scope of § 1292(b). Compare Western Geophysical Co. of Amer. v. Bolt Association, Inc., 440 F.2d 768, 770 (2d Cir. 1971).

Accordingly, the judgment is amended by adding the following: this is to certify that the judgment dismissing Count Five involves a controlling question of law as to which



There is a substantial ground for difference of opinion and  
such an immediate appeal from the other way substantially  
advance the ultimate determination of the litigation.

SO ORDERED.

Dated at Hartford, Connecticut, this 4th day of  
December, 1973.

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M. Joseph Blumenfeld  
M. Joseph Blumenfeld  
Chief Judge

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

CAPITAL TEMPORARIES, INC. OF  
HARTFORD; CAPITAL TEMPORARIES,  
INC. OF NEW HAVEN; and  
CONSTANTINE T. ZESSOS

v.

THE OLSTEN CORPORATION

CIVIL NO. 14,749

AMENDED PARTIAL SUMMARY JUDGMENT

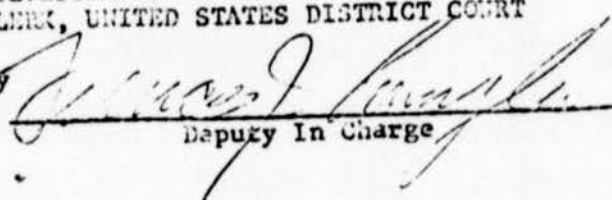
Partial Summary Judgment having been entered by the Clerk under date of October 15, 1973, dismissing Count Five of the Complaint, and subsequent thereto the Court having filed its Supplemental Memorandum, under date of December 4, 1973, amending said Judgment,

It is ORDERED and ADJUDGED that the partial summary judgment dismissing Count Five involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate determination of the litigation.

Dated at New Haven, Connecticut, this 13th day of December, 1973.

SYLVESTER A. MARKOWSKI  
CLERK, UNITED STATES DISTRICT COURT

By

  
Deputy In Charge

